SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1245

SAMUEL OKIN,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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United States Circuit Court of Appeals

SECOND CIRCUIT

IN THE MATTER

of

Petition of SAMUEL OKIN, stockholder of Electric Bond and Share Company, for a review of an order of the Securities and Exchange Commission dated the 7th day of September, 1944, pertaining to Electric Bond and Share Company, Electric Power & Light Corporation and United Gas Corporation, Files Nos. 70-314, 70-315, 59-21, 4-33, 54-91, 70-868.

TO THE HONORABLE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT:

The petition of Samuel Okin respectfully shows to this Court:

1. Your petitioner is the owner of Nine thousand (9,000) shares of the common stock of the Electric Bond and Share Company of a total of 5,250,357.66 shares of common stock outstanding. Petitioner is of the belief that he is one of the first five largest individual stockholders of record of a total of approximately 90,000 stockholders in said Electric Bond and Share Company.

2. Petitioner's said 9,000 shares of common stock has a present market value of approximately $100,000.00, and in petitioner's opinion said common stock has a value in excess of $225,000.00.

3. During 1930 and 1931 the Electric Bond and Share Company loaned to the United Gas Corporation the sum of $25,925,000 in cash for which the United Gas Corporation in December, 1931, made and delivered to the Electric Bond and Share Company its 6% demand note in the sum of $25,925,000, no part of which principal sum has been paid to date and the interest on which has been paid at fixed periods in the past. By reason of the aforesaid there is now owing to the Electric Bond and Share Company, the owner and holder of said note, from the United Gas Corporation, the principal sum of $25,925,000, with such interest thereon at the rate of 6% which may not as yet currently have been paid.

4. The Electric Bond and Share Company in 1935 loaned to the United Gas Corporation the sum of $3,000,000 in cash, at 6% interest, no part of which principal has been paid except the sum of $1,000,000, leaving a balance owing to the said Electric Bond and Share Company from the United Gas Corporation of the sum of $2,000,000, which now remains unpaid, the interest on which was paid at fixed periods in the past, and currently there remains unpaid only such interest at 6% as has not been paid.

5. The United Gas Corporation in 1936 owned $25,000,000 principal amount of 6% bonds of its subsidiary, United Gas Public Service Company, which the United Gas Corporation sold to the Electric Bond and Share Company, and received therefor the sum of $25,000,000 and accrued interest on said bonds, in cash. Thereafter the said United Gas Public Service Company was merged with the United Gas Corporation which assumed the payment of the aforesaid bonds which are now owned and held by the said Electric Bond and Share

Company, and no part of which principal sum of $25,000,000 has been paid, and the interest on which at the rate of 6% has been paid at fixed periods in the past. By reason of the aforesaid there is now owing to the Electric Bond and Share Company from the United Gas Corporation the said principal sum of $25,000,000 on said bonds, with such interest thereon at the rate of 6% which may not as yet currently have been paid.

6. The Electric Bond and Share Company purchased in the open market $400,000 principal amount of 5% First Mortgage Gold bonds of the Houston Gas Securities Company, a subsidiary of the United Gas Corporation, at a cash cost to the said Electric Bond and Share Company of $309,920. Thereafter the said Houston Gas Securities Company was merged with the United Gas Corporation which assumed the payment of said bonds, which are now owned and held by the Electric Bond and Share Company, and no part of which principal sum of $400,000 has been paid and the interest on which has been paid at fixed periods in the past. By reason of the aforesaid there is now owing to the Electric Bond and Share Company on said bonds from the United Gas Corporation the said principal sum of $400,000, with such interest thereon at the rate of 6% which may not as yet currently have been paid.

7. By reason of the facts alleged in paragraphs numbered "3" to "6", inclusive, the United Gas Corporation at the present time is indebted to the Electric Bond and Share Company in the sum of $53,365,000, with interest thereon at the rate of 6% with respect to the sum of $52,925,000 which may not as yet currently have been paid, and with interest on $440,000 at the rate of 5% which may not as yet currently have been paid, and no

part of which said principal sum of $53,365,000 has been paid.

8. In addition to the foregoing the Electric Bond and Share Company owns the following securities of the United Gas Corporation: 17,310 shares of the $7 preferred stock, cumulative, no par; 752,666 shares of common stock, no par value and, 151,005 option warrants for the purchase of common stock. The aforesaid securities owned by the Electric Bond and Share Company are carried on the books of said company at a value of $14,536,153.90 and represent a cash cost of $1,903,989.70 and $3,955,900.00 represents preferred stock issued for certain shares of said common stock.

9. The Electric Power & Light Corporation owns all the $7 second preferred stock of the United Gas Corporation consisting of 884,680 shares, cumulative, no par value, representing a capital stock liability of $88,468,000, and also owns 3,795,086 shares (48.54%) of the common stock of the United Gas Corporation and 3,600,040 option warrants (73.99%) of said corporation. As of June 1st, 1944, the arrearages on said second preferred stock amounted to $85.75 per share or a total of $75,861,310 on the said 884,680 shares.

10. The Electric Bond and Share Company owns the following securities of the Electric Power & Light Corporation, which represents a carrying value to the Electric Bond and Share Company, as shown by its books, of $36,606,915.55, of which sum $34,105,016.18 represents cash cost and $2,583,750 represents the portion acquired from Electric Investors, Inc., and which securities are as follows: 485 shares (.09%) of the $7 preferred stock, 13,905 shares (18.43%) of the $7 second preferred stock, 1,976,639 shares

(57.25%) of the common stock, and 393,408 warrants (72.23%); which said securities held by Electric Bond and Share Company represent 46.84% of the total voting power represented by all the securities of the Electric Power & Light Corporation. Upon information and belief that by reason of the aforesaid, the Electric Bond and Share Company has voting control of the said Electric Power & Light Corporation and United Gas Corporation.

11. In May, 1941, the United Gas Corporation and certain of its subsidiaries filed a declaration with the Securities and Exchange Commission seeking approval for the issuance and sale by United Gas Corporation of $75,000,000 principal amount of first mortgage and collateral trust bonds, 3¼% series due 1958, to fourteen insurance companies at a price of 99.34. It was proposed by United Gas Corporation that the net proceeds of such would be used:

(1) To retire $28,850,000 principal amount of United Gas Public Service Company debentures 6% due July 1, 1953, assumed by United Gas Corporation, $25,000,000 principal amount of which is held by Electric Bond and Share Company and $3,850,000 principal amount by Houston Gas Securities Company, all of whose capital stock was owned by the United Gas Corporation.

(2) To pay the 6% demand note of the United Gas Corporation in the principal amount of $25,925,000 held by Electric Bond and Share Company.

(3) To repay an open account indebtedness of $2,000,000 to Electric Bond and Share Company.

(4) To purchase $6,000,000 principal amount of First Mortgage and Collateral Trust Bonds, 4% series due 1961, to be issued by United Gas Pipe Line Company.

The said declaration stated that the corporation management of United Gas Corporation was considering recommending the use of a substantial portion of the remaining proceeds for payment of the dividend arrearages on the $7 preferred stock of United Gas Corporation then amounting to $9,502,490, but which has since been reduced to $3,654,804 as of June 1, 1944, and upon information and belief that said arrearages have been further reduced since June 1, 1944.

12. Concurrently in May, 1941, the Electric Bond and Share Company filed with the Securities and Exchange Commission its declaration wherein it sought permission to use the said sum of approximately $53,365,000, which it would receive from United Gas Corporation under the above specified declaration referred to in paragraph numbered "11" herein, together with some $6,000,000 from its own treasury to reduce its outstanding preferred stock.

13. As of December 31, 1943, the Electric Bond and Share Company had outstanding $94,944,700 of its $6 preferred stock which had been reduced by market purchases to $90,072,900 on May 27, 1944; and had outstanding on December 31, 1943, $24,599,700 of its $5 preferred stock which had been reduced to $22,530,000 by market purchases from December 31, 1943 to May 27, 1944.

14. That in the aforesaid declaration Electric Bond and Share Company proposed to apply the said $60,000,000 towards the reduction of its preferred stock liability by invitation of tenders, purchases in the open market, pro rata payment in liquidation, or by any other appropriate method.

15. On the 31st day of May, 1941, the Securities and Exchange Commission issued its Notice and Order for

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Company against the United Gas Corporation, now amounting to $53,365,000, to be recognized in full and the retention by the Electric Bond and Share Company of its stock interests in the United Gas Corporation which have a market value in petitioner's opinion of approximately $3,300,000.

19. During 1942, petitioner was granted permission by the Securities and Exchange Commission to participate in the aforesaid consolidated proceeding and did participate therein.

20. Shortly prior to the 6th day of March, 1944, the United Gas Corporation filed with the Securities and Exchange Commission what is claimed to be a plan of reorganization of the said United Gas Corporation under the provisions of Section 11(e) of the Public Utility Holding Company Act of 1935, which said alleged plan was joined in by said Electric Bond and Share Company and Electric Power & Light Corporation.

21. The said alleged plan as filed with the Securities and Exchange Commission by the United Gas Corporation, as referred to in paragraph numbered "20" herein, proposes:

(1) United Gas Corporation will file an amendment to its previously described filing herein (File No. 70-314) in which amendment it will seek approval of the issuance and sale of the sum of $100,000,000. principal amount of First Mortgage and Collateral Trust Bonds.

(2) Electric Power & Light Corporation will acquire from Electric Bond and Share Company for a cash purchase price of $44,000,000 the following claims in and against United Gas Corporation held by Electric Bond and Share Company:

(a) $25,000,000 principal amount of 6% debentures, due 1953, of United Gas Public Service Company assumed by United Gas Corporation.

(b) The 6% demand note of the United Gas Corporation in the principal amount of $25,925,000.

(c) The 6% open account indebtedness from United Gas Corporation to Electric Bond and Share Company of $2,000,000.

(d) $440,000 principal amount of 5% Collateral Trust Gold Bonds of Houston Gas Securities Company assumed by United Gas Corporation.

(e) 17,310 shares of $7 preferred stock, 752,666 shares of common stock, 151,005 option warrants for the purchase of common stock of United Gas Corporation.

(3) Electric Power & Light Corporation will surrender to United Gas Corporation as a capital contribution the 17,310 shares of $7 preferred stock of United Gas Corporation acquired by it from Electric Bond and Share Company in the transaction described in paragraph (2) above and United Gas Corporation will cancel the said shares.

(4) United Gas Corporation will redeem and cancel the 432,512 shares of $7 preferred stock held by the public at their redemption price of $110 per share plus accumulated dividends thereon to the redemption date, employing for such purpose so much of the proceeds of the sale of its First Mortgage and Collateral Trust Bonds as may be necessary therefor (approximately $53,000,000).

(5) United Gas Corporation will declare and pay a dividend on its $7 second preferred stock, all of which

is held by Electric Power & Light Corporation, of 12,385,520 shares of its $1 par value common stock, and Electric Power & Light Corporation will accept such stock dividend in payment of $12,385,520 of the accumulated and unpaid dividends on such stock.

(6) Electric Power & Light Corporation will surrender to United Gas Corporation for cancellation 444,680 shares of United Gas Corporation's $7 second preferred stock together with all rights to accumulated undeclared dividends thereon and will receive in exchange therefor 44,468,000 shares of the $1 par value common stock of United Gas Corporation.

(7) United Gas Corporation will purchase from Electric Power & Light Corporation for $44,000,000 in cash, its remaining 440,000 shares of second preferred stock having a stated value of $44,000,000 and Electric Power & Light Corporation will also transfer to United Gas Corporation the right of Electric Power & Light Corporation to accumulated and unpaid dividends on such stock. United Gas Corporation will derive the $44,000,000 in cash from the proceeds of its sale of First Mortgage and Collateral Trust Bonds and Electric Power & Light Corporation will use the $44,000,000 received by it to discharge its obligation arising in connection with its acquisition of securities of United Gas Corporation from Electric Bond and Share Company as described in paragraph (2) above.

(8) Electric Power & Light Corporation will surrender to United Gas Corporation as a capital contribution the securities and open account indebtedness of United acquired by Electric Power & Light Corporation from Electric Bond and Share Company as described in paragraph (2) above (exclusive of the

17,310 shares of United Gas Corporation's $7 preferred stock previously surrendered as described in paragraph (3) above) together with option warrants for the purchase of 3,600,040 shares of the common stocks of United Gas Corporation.

(9) United Gas Corporation will pass a resolution entitling its common stockholders to two-thirds of a share of common stock for each share of such stock then held and, in connection therewith, will cause to be transferred from Capital Surplus to Stated Capital the sum of $42,613,209 to cover the capital liability to be represented by the additional shares of stock so to be issued and to render such shares fully paid and non-assessable.

(10) United Gas Corporation will use the remaining proceeds of the sale of its First Mortgage and Collateral Trust Bonds together with such additional cash in its treasury as may be necessary to redeem and cancel $3,460,000 principal amount of publicly held 5% Collateral Trust Gold Bonds of Houston Gas Securities Company, due March 1, 1952, assumed by United Gas Corporation.

(11) United Gas Corporation will amend its certificate of incorporation so as to eliminate the authorization of the $7 preferred stock and the $7 second preferred stock and to reclassify the 106,533,022 shares of then outstanding $1 par value common stock into 10,653,302.2 shares of $10 par value common stock and will exchange the certificates for the new shares of common stock for the certificates for the outstanding common stock on the basis of 1 share of new stock for 10 shares of old stock. Provisions are then made as to fractional shares of stock and for the revocation of outstanding option warrants for the pur-

chase of common stock of United Gas Corporation and for their abrogation and cancellation and non-participation in the plan.

22. On the 6th day of March, 1944, the Securities and Exchange Commission issued its Notice of Filing of Section 11(e) Plan and Application or Declaration (Or Both) Under Section 12(c), Order of Consolidation, and Notice of and Order for Hearing wherein the said Commission ordered that the proceedings with respect to said Plan filed pursuant to Section 11(e) of the Act and the said application or declaration (or both) filed by Electric Bond and Share Company and the pending consolidated proceedings under Sections 6, 7, 9(a), 10, 11(b)(2), 12 and 18 of the Act (File Nos. 70-314, 70-315, 59-21, 4-33) be consolidated to the extent of consideration by the Commission of the issue involved, and the record in the pending consolidated proceedings be incorporated in the consolidated proceedings directed under the order of March 6th, 1944.

The said order of the Securities and Exchange Commission dated the 6th day of March, 1944, ordered that a hearing be held in the consolidated proceedings on the 4th day of April, 1944 before its Trial Examiner William W. Swift and that all persons desiring to be heard or otherwise wishing to participate in the proceedings shall notify the Commission in the manner provided by its Rules of Practice, Rule XVII, on or before April 1, 1944.

23. The said order of the Securities and Exchange Commission dated the 6th day of March, 1944 further provided:

"IT IS FURTHER ORDERED that without limiting the scope of the issues presented in the consolidated proceedings particular attention will be directed at the

hearings to the following matters and questions in addition to those stated in the order of this Commission referred to above, dated May 31, 1941:

1. Whether the plan as submitted or as hereafter modified is necessary to effectuate the provisions of Section 11(b) of the Act.

2. Whether the proposed plan as submitted or as hereafter modified is fair and equitable to the persons affected thereby.

3. Whether the proposed acquisition of shares of its preferred stocks by Bond and Share, and the method proposed therefor, is appropriate and in the public interest and in the interest of investors, and in conformity with the standards of Section 12(c) of the Act.

4. Whether, if the transactions proposed are authorized by the Commission, it is appropriate in the public interest and in the interest of investors and consumers that any terms and conditions be imposed in connection with such authorization and, if so, what such terms and conditions should be.

5. Whether the fees and expenses proposed to be paid in connection with the consummation of the Plan and all transactions incidental thereto are for necessary services and are reasonable in amount.

6. Whether the Commission shall, in accordance with the petition of the parties to the Plan, take and exercise jurisdiction to fix and determine the amounts of the payments, if any, to be made by United or Electric to the plaintiffs or their attorneys in the legal proceedings specifically enumerated in the plan, by way of reimbursement or disbursements or allow-

ances for legal service and, if so, what action it should take in the exercise of such jurisdiction.

7. Whether the accounting entries in connection with the proposed transaction are in conformity with the standards of the Act and Rules promulgated thereunder.

8. Generally, whether the proposed transactions are in all respects in the public interest and in the interest of investors and consumers and consistent with all applicable requirements of the Act and Rules thereunder."

24. The said order of the said Commission further provided:

"IT IS FURTHER ORDERED that United, Electric and Bond and Share shall give notice of this hearing to all their security holders (insofar as the identity of such security holders is known or available to them) by mailing to each of said persons a copy of this Notice and Order for Hearing at his last known address at least 20 days prior to the date of this hearing."

25. Pursuant to the aforesaid provisions of the said order of the Securities and Exchange Commission dated the 6th day of March, 1944, in said consolidated proceedings, as aforesaid, petitioner received by mail a copy of the said order of the said Commission, together with a copy of the plan and a copy of the letters with respect thereto being sent by the said Electric Bond and Share Company, Electric Power & Light Corporation and United Gas Corporation, to their respective stockholders. Pursuant to the said order of the Securities and Exchange Commission and the applicable provisions of the Public Utility

Holding Company Act of 1935 and the Rule of the said Commission purporting to have been promulgated thereunder, petitioner filed with the said Commission his application to intervene in the said consolidated proceedings which said application contained the following statements by petitioner after stating in substance many of the facts hereinbefore referred to as to the matters involved:

> "It was deponent who strenuously objected to the proposed subordination of the obligations due Electric Bond and Share Company from United Gas Corporation, as hereinbefore described, and who succeeded in stopping such proposed subordination.
>
> At the request of Electric Bond and Share Company, on September 21, 1943, a hearing was held in said consolidated proceeding for the purpose of taking the testimony of Ralph B. Feagin, who was the active president of the United Gas Corporation from June 3, 1930 until the spring of 1933, and testified at great length as to transactions between Electric Bond and Share Company, the United Gas Company, and the United Gas Corporation resulting in the present indebtedness of the United Gas Corporation to the Electric Bond and Share Company other than $2,000,000 loan. It is deponent's opinion that the said testimony of the said Feagin uncontradicted in the record is conclusive proof of the absolute validity of the said present indebtedness of the United Gas Corporation to the Electric Bond and Share Company. On the 21st day of September, 1943, the said consolidated hearing was *again* closed and although deponent requested permission of the Securities and Exchange Commission shortly thereafter to argue the matters, deponent was informed in substance that no determination had been made as to the procedure to be followed in this matter. At no time prior to the

6th day of March, 1944, was any order made by the Commission as to the matters which had been the subject matter of the said consolidated proceeding determining the same insofar as the said Commission had any jurisdiction, but on the contrary in apparent continuation of the efforts of the staff of the Commission to unjustly and illegally, in deponent's opinion, prevent payment of what deponent is fully satisfied is the absolute and unqualified obligations of United Gas Corporation to Electric Bond and Share Company, it now appears that various discussions have been held by the staff of the Commission with officers of the Electric Bond and Share Company, Electric Power & Light Corporation and United Gas Corporation, as a result of which there has been filed with the Commission a plan joined in by United Gas Corporation, Electric Power & Light Corporation and Electric Bond and Share Company, wherein among other things it is contemplated in some wholly indirect and what would appear to be detrimental manner, that Electric Bond and Share Company receive $44,000,000 for its holdings of $53,365,000 of debt securities of United Gas Corporation, 17,310 shares of $7 preferred stock, 752,666 shares of common stock and option warrants to purchase 151,005 shares of common stock, of the United Gas Corporation. The securities other than the debt securities on March 6, 1944 had a current market value of $3,900,000. If such a proposed transaction is consummated, it will result in the reduction of surplus of the Electric Bond and Share Company of $23,770,000.

* * * * * * *

It is deponent's opinion not only that this proposed plan is in its entirety highly objectionable to Elec-

tric Bond and Share Company, in that it contemplates what deponent considers the making of a gift by Electric Bond and Share Company of assets having a present value in deponent's opinion of approximately $13,000,000; but in addition the mechanics of the proposed plan are so highly detrimental to Electric Bond and Share Company and its stockholders, that the grave legal problem will arise as to the right of Electric Bond and Share Company's officers and directors to permit United Gas Corporation to purchase 440,000 shares of the second preferred stock of United Gas Corporation for the sum of $44,000,000. The next substantial question of law presented would be what right legally would the Electric Power & Light Corporation and its officers and directors have to take $44,000,000 acquired by that company and turn the same over to Electric Bond and Share Company for certain assets of that company which it is contemplated to surrender to United Gas Corporation. If deponent was of the belief that the so called master minds who have been obviously responsible for the creation of this plan, would alone sustain the losses which deponent is firmly convinced would arise thereby, deponent might look at the matters in a different light, but since deponent realizes that only Electric Bond and Share Company and its stockholders are the real victims of the activities of the staff of the Securities and Exchange Commission and acquiesced in by the management of the Electric Bond and Share Company under the proposed plan, deponent is determined to prevent such occurrences.

The proposal of Electric Bond and Share Company to use $44,000,000 in purchasing on the New York Curb Exchange its preferred stock, when at the present time it has unexpended approximately $10,000,000

in cash and securities which the Commission authorized for such use, is too absurd to even be the subject matter of any comment. This merely illustrates again the obvious determination of the management of Electric Bond and Share Company not to employ the customary method of tender even though the preferred stocks of the company are presently selling above 90. The earned surplus of the company is being continuously substantially reduced as a result of payment of preferred dividends and yet the management with the approval of the Commission, heretofore given, continues to employ only purchases on the New York Curb Exchange which in deponent's opinion is most detrimental. The plan recites that Electric Bond and Share Company joins in the said plan upon the further condition that the Commission, concurrently with or prior to its approval of the plan, issues its order making effective the declaration or application filed by Electric Bond and Share Company, for the use by it of all or any part of the $44,000,000 received by it from Electric Power & Light Corporation in the acquisition and retirement of its preferred stock. It is important to note however that in the declaration, Electric Bond and Share Company also seeks the right to use all or any part of the unexpended portion of such cash in connection with any other plan for the reduction of its outstanding preferred stock which may hereafter be submitted by the company to the Commission and approved by it. Since no such plan accompanies the declaration it is obvious that no such plan can be approved by the Commission as part of the declaration. Therefore it is impossible to conceive how the Commission can on the present declaration of Electric Bond and Share Company approve the same.

To completely present all the objections which deponent has to the above entitled presently consolidated proceeding would cause this affidavit to be extremely voluminous, and deponent therefore is not attempting to state all his objections and wants it specifically understood that the foregoing does not represent all his objections.

Deponent's experience before the Securities and Exchange Commission in the past, and the facts as appearing in this matter, have fully proven to deponent that the only person upon whom deponent can rely in these proceedings to protect his substantial interests as a stockholder of Electric Bond and Share Company is deponent, and that by reason the aforesaid it is most essential to the interests of deponent that he be permitted to intervene in these proceedings, to the extent that he has not been granted participation heretofer, so that he may take the necessary precautions to protect his interests herein.

WHEREFORE deponent respectfully asks that he be permitted to intervene in the above entitled consolidated proceedings, to the extent that he has not heretofore already been granted participation."

26. On the 4th day of April, 1944, Trial Examiner William W. Swift of the Securities and Exchange Commission granted to petitioner the right to participate in the said consolidated proceeding which included leave to call and examine witnesses, to offer documentary evidence and to cross-examine witnesses.

27. Petitioner thereafter participated in the said consolidated proceeding before the Securities and Exchange Commission and cross-examined witnesses produced by the United Gas Corporation, Electric Bond and Share

Company and Electric Power & Light Corporation and alleged claimants in said consolidated proceedings.

28. Petitioner hereby reaffirms, reiterates and restates each and every statement made in his aforesaid affidavit for intervention as hereinbefore more fully referred to in paragraph numbered "25" herein, and hereby incorporates into this petition the said statements as though the same had been made herein without being quoted.

29. During the course of the said consolidated proceedings petitioner was compelled to make a motion on or about April 12th, 1944 to set aside rulings of the said Trial Examiner to which exceptions were duly taken and which rulings petitioner respectfully states in his opinion frustrated the efforts of petitioner to protect his substantial interests and to elicit the proof which petitioner sought to elicit to substantiate his objections to the matters which were the subject matter of the said consolidated proceeding, and which rulings petitioner respectfully states in his opinion deprived petitioner of his property rights without due process of law in violation of the Constitution of the United States and in violation of the provisions of the Public Utility Holding Company Act of 1935 and its expressed intent and purpose. In the said motion filed with the said Securities and Exchange Commission, as aforesaid, deponent made the following statements, which are hereby made part of this petition:

"The undersigned participant in the above entitled consolidated proceedings and owner of Nine thousand (9,000) shares of the common stock of Electric Bond and Share Company hereby moves the Commission to forthwith set aside the rulings of Trial Examiner William W. Swift on the hearing in the above en-

titled proceedings pursuant to the orders of the Commission dated the 6th and 25th days of March, 1944, as to which rulings the undersigned participant took exception on the record, on the ground as hereinafter referred to, that said rulings are presently preventing this participant from eliciting the evidence in the consolidated proceeding which is material and necessary to the protection of the valuable property rights owned by this participant and is preventing this participant from obtaining a hearing before the Commission such as is contemplated by due process of law as guaranteed by the Constitution of the United States and which rulings constitute a deprivation of property rights owned by participant without due process of law.

In the order of the Commission dated the 6th day of March, 1944, the following is referred to as two of the issues in said consolidated proceeding:

'2. Whether the proposed plan as submitted or as hereafter modified is fair and equitable to the persons affected thereby.

* * * * * * *

8. Generally, whether the proposed transactions are in all respects in the public interest and in the interest of investors and consumers and consistent with all applicable requirements of the Act and Rules thereunder.'

Under the provisions of the order of the Commission dated the 25th day of March, 1944, the issues referred to in the order dated the 6th day of March, 1944, are also made applicable to the amendment to the joint declaration designated File No. 70-314.

The plan as proposed and the amendment to the said joint declaration, which are the subject matter of this consolidated proceeding, create certain fundamental issues which vitally affect the interests of stockholders of the Electric Bond and Share Company. The primary question is why and under what circumstances is it proposed that the Electric Bond and Share Company accept $44,000,000 in payment of the securities of the United Gas Corporation which have a value of $57,000,000, thereby causing a loss of approximately $2.50 per share of common stock of the Electric Bond and Share Company? The next important question is why do the parties resort to the method indirectly of having Electric Power & Light Corporation sell 440,000 shares of the Second Preferred Stock of the United Gas Corporation to the United Gas Corporation and then have the Electric Power & Light Corporation use the said $44,000,000 to buy the said securities from the Electric Bond and Share Company, which the plan then contemplates the Electric Power & Light Corporation will contribute to the United Gas Corporation as a capital contribution? Such proceedings inevitably lead to new law suits and certainly are a very poor method of alleged settling of old claims.

It is obvious that under the orders of this Commission, this participant had the right to question the officers of Electric Bond and Share Company and Electric Power & Light Corporation as to all conversations leading up to and in any way connected with the plan and declaration and amendments which are the subject matter of this consolidated proceeding. Realizing that the elementary basic rules of law authorize questions pertaining to conversations connected with the matters which are the subject mat-

ter of a proceeding which had as its very foundation the question of fairness to persons affected thereby, this participant on the consolidated hearing propounded questions on cross-examination of witnesses which sought to elicit from the witnesses, who were officers of the declarant corporations, the conversations between officers of the declarant corporations which lead to the filing of the present plan and declaration and amendments thereto, and conversations between said officers of the declarants and members of the staff of the Commission which are referred to in the said Plan, the letters sent to stockholders with respect to same and the testimony of the said witnesses directly on these consolidated proceedings.

The rulings of the Trial Examiner which are the subject matter of this motion can be divided into three classes:

A. The sustaining of all objections to questions by this participant as to conversations between the officers of the declarant corporations and members of the staff of the Commission.

B. The sustaining of objections to certain questions by this participant as to conversations between the officers of the declarant corporations at times when the staff of the Commission were not present.

C. The refusal of the Trial Examiner to strike from the record answers of witnesses which were not responsive to questions propounded by this participant and the refusal of the Trial Examiner to direct the witness to answer the questions.

* * * * * * *

The staff of the Utility Division of the Securities and Exchange Commission, the members of the Com-

mission and any one connected with the Commission are not granted immunity under the provisions of the Public Utility Holding Company Act of 1935 or any other Act of Congress.

This participant is seeking to establish that the staff of the Securities and Exchange Commission are directly responsible for the present filing of the said plan and the amendment to the said declaration which if ever declared effective this participant will sustain a loss of approximately $25,000 and the common stockholders of the Electric Bond and Share Company as a class sustain a loss of approximately $13,000,000. This is not a trivial amount and whoever is responsible for the situation should assume the detriment which may or may not result therefrom. The record demonstrates very conclusively that members of the staff of the Utility Division of the Commission have been directly involved in the creation of the matters which are now the subject matter of this proceeding. If the said staff members have lawfully performed their administrative duties and if no harm to any person has been caused which can be attributed to any improper act of the said staff members, what are they afraid of? Of course, it is obvious, that if the staff members have used their administrative positions granted to them by an Act of Congress to foster an improper use of such office as a result of which a great wrong or wrongs are being perpetrated, the staff members would be very anxious to prevent the uncovering of such acts. It seems to this participant that the Commission, however, would be most anxious to eliminate any question of impropriety on the part of any of its members and that the Commission would be most anxious to prove to all investors that its staff is most impartial and

is not using its offices to favor any one group of stockholders of any company as against any other group of stockholders in the same or any other company.

Let me just briefly refer to the facts in this record which demonstrate conclusively that the present plan and amendment to the declaration are the direct result of the activities of the staff of the Commission, and anyone who dares contend to the contrary is either a knave or a fool.

At page 12 of the plan appears the following:

'A. BOND AND SHARE: In light of the matters set out in Part III above, it has become increasingly evident to Bond and Share, although it denies that the questions raised with respect to the validity and position of its investments in United in proceedings before the Commission mentioned in Part III, and the claims of the plaintiffs in the stockholders' derivative actions enumerated therein, have any foundation either in fact or law, that a determination of the issues raised through court action would be lengthy, expensive and subject to the usual uncertainties of such procedure. In these circumstances, and after discussions with the staff of the Commission and with the officers of and counsel for United and Electric, Bond and Share has determined that the compromise and settlement of its interests in and claims against United and the other transactions proposed in the plan are for the best interests of its stockholders, both preferred and common, and joins in and becomes a party hereto but without prejudice to and with full and complete reservation of all its constitutional and legal rights in the event that the plan as sub-

mitted, or as modified with its consent, shall not be fully performed and consummated subject to the terms and conditions contained in the plan.'

In its letter dated March 6, 1944, to its stockholders, Electric Bond and Share Company at page two thereof states:

'Hearings before the SEC on the United Gas 1941 Plan extended over a period of almost two and a half years and involve about 9300 pages of testimony and 1100 exhibits. We have maintained throughout these proceedings that Bond and Share was entitled to recover the full amount of United Gas obligations to your Company, as was indicated in a policy statement by your Company's President at the last annual stockholders' meeting. However, after extended discussions with the staff of the SEC the directors and officers concluded that the claims of Bond and Share would not be recognized in full. Legal determination of the company's position could only be obtained after protracted litigation—perhaps three years.

This would drastically cut income through probable suspension of $3,200,000 of annual interest from United Gas during litigation, thus requiring omission or reduction of dividends on Bond and Share's preferred stocks, disrupting its financial program, and seriously interfering with carrying out plans for meeting the problems created by the Holding Company Act. Furthermore, assuming success in litigation to set aside any SEC order for lack of authority to make it, it would still be necessary to face the pending law suits already referred to.'

At page one of the letter of United Gas Corporation to its stockholders dated March 6, 1944, appears the following:

'As you will see on pages 8 and 9 of the Plan, your company filed with the Commission, on May 5, 1941, an application for the refinancing of the Company; other proceedings were instituted and other issues were raised before the Commission and in the Courts. After extended hearings before the Commission and conferences with the Commission's staff the parties to the plan arrived at the settlement which is incorporated in the plan.'

Electric Power & Light Corporation in its letter to its stockholders dated March 6, 1944, on page one thereof makes the following statements:

'As you have been informed in the annual reports of Electric and other communications, a proceeding before the Securities and Exchange Commission with reference to United, its conformity to the requirements of the Public Utility Holding Company Act and its relationship to Bond and Share and to Electric, was commenced by the Commission on May 31, 1941 and was consolidated with a financing application which had been filed by United shortly prior thereto. The issues raised by the Commission in this proceeding were many and complicated. The hearings have consumed an enormous amount of time and a voluminous record has been assembled with reference to the issues thus raised. In addition, various litigation have been instituted in the New York and Federal courts by stockholders of United and Electric, raising some of the same isues which have been raised in the Commission proceedings and certain similar issues.

The Plan has for its purposes, among other things, the simplification of the capital structure of United, by converting it into a capital structure consisting only of common stock, and debt, and the effecting of a fair and equitable distribution of voting power among the

security holders of United. In addition, the Plan is designed to effect the settlement and discharge of all issues which have been raised in the proceedings and litigations above referred to, whether arising under the Public Utility Holding Company Act or out of the intercorporate relationships of United and its parents. The Plan represents the culmination of protracted negotiations and was arrived at after consultation with the staff of the Securities and Exchange Commission.' Upon the hearing, Mr. Murphy, President of Electric Bond and Share Company, and Mr. Gill, President of Electric Power & Light Corporation and United Gas Corporation also testified on direct examination that the proposed plan and settlement represents the results of many conversations with the staff of the Commission. Under such circumstances and in the face of these undisputed facts, the Trial Examiner repeatedly sustained all objections to all questions propounded by this participant as to the substance of conversations between the officers of the declarant corporations and the staff of the Commission. How can anyone intelligently argue that such conversations and the proof thereof are not material and relevant in the determination of the issues before the Commission as to whether such plan is fair and equitable and as to whether the stockholders of the companies involved are not being taken advantage of?

In its letter to its stockholders (supra), Electric Bond and Share Company, states: 'However, after extended discussions with the staff of the SEC the directors and officers concluded that the claims of Bond and Share would not be recognized in full. Legal determination of the company's position could only be obtained after protracted litigation—perhaps three years.'

What member of the staff informed the officers and directors of Electric Bond and Share Company that

the claims of Bond and Share 'would not be recognized in full', and what authority had any such staff member or members of the Commission to make any such assertions? Since when are the statements of the staff members of the Commission of any binding force upon the Commission? Who of the staff members of the Commission who allegedly conferred with said officers and directors undertook to advise them in advance of any formal determination of the Commission as to what such determination would be and who undertook to know what the Commission would do in the future after the submission of the case to it? Who of the staff members had the authority to make any representations as to the future activities of the Commission sufficient to justify the Electric Bond and Share Company to convey these representations as aforesaid to its stockholders?

Who of the staff members of the Commission had any authority to make any statements to the officers and directors of the Electric Bond and Share Company upon which they predicated the following statements in the said letter of March 6, 1944 to its stockholders (p. 2):

'This would drastically reduce income through probable suspension of $3,200,000 of annual interest from United Gas during litigation, thus requiring omission or reduction of dividends on Bond and Share's preferred stocks, disrupting its financial program, and seriously interfering with carrying out plans for meeting the problems created by the Holding Company Act. Furthermore, assuming success in litigation to set aside any SEC order for lack of authority to make it, it would still be necessary to face the pending law suits already referred to.'

It is obvious from the foregoing that the staff of the Commission must have represented to the officers and directors of the declarant companies that unless this matter is settled for the sum of $44,000,000 and Electric Bond and Share Company turns over all its securities of the United Gas Corporation having a value of approximately $57,000,000 for said amount, that the Commission would take certain very drastic steps against Electric Bond and Share Company. If the foregoing is not the fact, then Electric Bond and Share Company deliberately misrepresented the true facts to its stockholders in its said letter. If it is the fact then the staff of the Utility Division of the Securities and Exchange Commission have deliberately violated their office by using the same to compel unlawfully the deduction of the sum of $13,000,000 lawfully due the Electric Bond and Share Company.

In any event the facts as to what actually transpired in these so-called meetings with the said staff members is the most vital part of this proceeding and only by eliciting the facts as the same can it be possible to determine to what extent, if any, the staff of the Commission brought pressure to bear upon the officers and directors of the declarant company to compel the settlement of the claims of Electric Bond and Share Company against United Gas Corporation for a sum approximately $13,000,000 less than the amount due thereby creating a gift in the sum of $13,000,000 approximately for the said stockholders of United Gas Corporation.

The last official word of the Commission as to the matters involved in this proceeding appeared in its Release 3301 dated January 31, 1942 wherein the Commission stated at page 4 thereof:

'Before proceeding to describe subsequent developments, it seems appropriate to refer briefly to the origin and history of the items of alleged indebtedness to Bond and Share totalling $52,925,000, and to indicate briefly the considerations which appeared to the staff to preclude approval or disapproval, *at the present time and on the present record,* of the proposal to repay such indebtedness out of the proceeds of the financing. In setting forth these matters, it should be clearly understood that we are in no sense making definitive findings of fact, nor passing in any way upon the ultimate issues relating to the validity and ranking of the indebtedness or other matters. Indeed, the very reason for exploring other possible interim courses of action at this time (as described below) is our inability, in the present state of the proceedings, to make such findings or pass upon such issues at the present time. Our purpose in setting forth this recital is merely to outline the general factual background which, in the view of members of the staff who have represented the Public Utilities Division of the Commission in these proceedings, appeared at least to raise substantial questions which would require careful consideration before approval could be given to any proposal to pay such indebtedness in full.'

The Commission further stated at page 9 of said Release 3301:

'At this time we are not in a position to reach any conclusion, in any manner or degree whatsoever, as to whether any violation of such fiduciary obligations may or may not have occurred, and if any occurred, as to what the consequences might be. The foregoing recital should not in any sense be construed as constituting or indicating any such conclusion. Indeed, it

is not in any sense intended to be a definitive statement or "finding" concerning the matters referred to, or a complete statement of all relevant facts and considerations. As stated previously, we set these matters forth at this time merely in order to give some indication of the reason for our inability to approve presently the proposal to liquidate completely the items of alleged indebtedness totalling $52,925,000; namely, that certain evidence in the record seems to present, at least prima facie, various substantial and difficult questions of law and equity which must be further considered and resolved before authorization could be given for full payment of the principal of the indebtedness to Bond and Share.'

This last official word of the Commission certainly could in no way shape or manner be used as any basis by any member of the staff of the Commission to justify the statements which must have been made to the officers and directors of the Electric Bond and Share Company upon which they predicated the statements in its letter as hereinbefore stated.

It is now an established fact that the staff of the Commission have repeatedly since the beginning of 1941 sought to prevent the payment of the obligations of the United Gas Corporation to Electric Bond and Share Company, and the said staff of the Commission have improperly predicated their opposition to a misconception of the law and the misuse of established equitable principles and a misconception and misconstruction of the statutory provisions of the Public Utility Holding Company Act of 1935.

At the very outset, this participant as a substantial stockholder of Electric Bond and Share Company knows that his primary fight is with the staff of the

Commission who have arbitrarily and unjustly taken a position against the stockholders of Electric Bond and Share Company which staff position is apparently now joined in by the management of Electric Bond and Share Company. This participant knows that his present difficulties are primarily due to the activities of the staff of the Commission which have now taken root and form the basis of the present plan and amendment to the declaration of the United Gas Corporation.

The release of the Commission (3301) at page 2 thereof refers to the fact that in the early part of 1941 the staff furnished copies of a preliminary staff memorandum entitled 'United Gas Corporation—Loans from Bond and Share' setting forth the staff's tentative thinking on the problems, in order that company officials might be advised of the nature of the inquiry which might be in order.

This preliminary staff memorandum which is now in the record as Okin's Ex. XI, was prepared by Milton Cohen, who was then assigned to the Electric Bond and Share Company matters, and who has for a long time now been the Director of the Public Utility Division of the Commission. The actions of the staff of the Commission in this matter are indicative of the original thoughts of Mr. Cohen as expressed in his said memorandum back in 1940 or 1941, which apparently have continued to exist during the intervening years.

If there is any basis for the stockholders of Electric Bond and Share Company losing approximately the sum of $13,000,000 of their assets, why should they not know in these proceedings what part the staff of the Commission had in the creation of any such loss? Having accomplished their purpose in forcing the management to agree to reduce the claim of Electric Bond and Share Company against United Gas Corporation

by the sum of approximately $13,000,000, what authority exists which purports to shield the members of the staff of the Commission from exposing their part in the creation of so substantial a loss? If the activities of the staff in this matter are justified by law and the facts in this case are beyond approach, why haven't they the courage of their convictions to express openly their part in the concoction of the proposed plan and the so-called settlement? Have the staff of the Commission the right to claim that they are immune from attack directly in these proceedings although they concededly actively in the so-called settlement activities and the creation of the plan?

It is inconceivable that any stronger case could ever be presented to this Commission by an investor to compel the staff of the Commission to openly and frankly state on the record all the facts pertaining to their entire activity in the creation of the proposed plan and alleged settlement.

It seems to this participant that the last place in the world where pertinent and relevent facts should be withheld is within any part of the Commission or its staff, and that the same standards which the Commission compels the public generally to adhere to, namely full disclosure of all pertinent and relevant facts, are just as applicable to the Commission and its staff."

* * * * *

"Upon the hearing various important questions by this participant addressed to declarant officials have been objected to by declarants' counsel and these objections have been sustained and in other instances where objections have been overruled, the witnesses have resorted to prepared similar answers, wholly unresponsive, and motions by this participant to strike the said answers as not responsive have been denied.

The question therefore squarely presented by this motion is whether or not by the rulings of the Trial Examiner, these witnesses are going to be permitted to withhold from the record the facts as to all negotiation and conferences which were climaxed by the filing of the proposed plan and so-called settlement.

One of the issues in this proceeding is whether the proposed plan and settlement is fair to investors. Only persons anxious to withhold facts would have the audacity to contend that in a proceeding such as this, the facts leading up to the creation of the proposed plan and so-called settlement are not material and necessary to a proper determination in this proceeding.

The officials of the declarant corporations have succeeded up to the present time on the record due to the rulings of the Trial Examiner in confining their testimony as to the proposed plan and settlement that the said plan was, in the judgment of the officers and directors of the declarant corporations, fair and equitable to all the persons involved. All efforts of this participant to spread upon the record all the facts which preceded the preparation of the said proposed plan and settlement and which are involved in the preparation of the same, were frustrated by the rulings of the Trial Examiner.

The Trial Examiner apparently subscribing to the thought that in this proceeding all that matters is whether the proposed plan and so-called settlement is fair and equitable to the extent only that one is permitted to ask whether the witness thinks that the plan is fair and equitable, but apparently the Trial Examiner has completely overlooked the facts that whether a plan is fair and equitable is dependent

upon the circumstances under which such plan is created and the manner in which it was brought into existence.

An examination of the record shows that the rulings of the Trial Examiner have succeeded in preventing the witnesses from showing under what circumstances the declarants are claimed to have agreed upon a deduction of $13,000,000, approximately, in the indebtedness due Electric Bond and Share Company and securities owned by it in the United Gas Corp. Is it possible that this Commission has no interest in the manner in which $13,000,000, approximately, in investors money is being dissipated? If the Commission is interested then why should not these witnesses be compelled to state how the figure of approximately $13,000,000 was arrived at? Any person with any degree of sense knows that the figure of $13,000,000 was not taken out of thin air and that there are explanations for the use of this figure. Why should this testimony be absent from the record? It is impossible to conceive a more outrageous situation than that of an investor whose money is being dissipated being told simply that it had been decided to deduct a very substantial sum without the officials being compelled to show how this very substantial figure was arrived at.

It may be that the witnesses when compelled to answer these questions will have to admit that they have no answer and that the sum of $13,000,000 approximately was deducted because the staff of the Commission insisted upon such deduction. If such are the facts why should they be withheld from the record?

Whether a plan is fair is dependent upon the facts and not the conclusions of the officers of the participants to the plan that they believe the plan to be fair.

The stockholders of Electric Bond and Share Company are entitled to know in this proceeding why approximately the sum of $13,000,000 which is the property of said stockholders, is being relinquished by its officers and directors. Up to the present time the record is barren of any legal explanation for any such relinquishment and all efforts of this participant to compel the witnesses to disclose the facts have been frustrated by the rulings of the Trial Examiner."

30. Petitioner received the following letter from Securities and Exchange Commission, with respect to the motion referred to in the preceding paragraph:

SECURITIES AND EXCHANGE COMMISSION
PHILADELPHIA 3

Office of the Secretary

April 13, 1944

Samuel Okin, Esquire,
32 Broadway,
New York, New York.

Re: United Gas Corporation
Electric Bond and Share Company, et al.
(Files 70-314, 70-315, 59-21, 4-33, 54-91, and 70-868)

Dear Sir:

The Commission has considered and declined to pass at this time upon your petition, filed on April 12, 1944, in the proceedings under the Public Utility Holding Company Act of 1935 pending in respect of United Gas Corporation, et al. (Files 70-314, et al.), for reversal of certain rulings on evidence made by the trial examiner, to which you took exception. It

is assumed that you will preserve your exceptions on the record for further consideration by the Commission in accordance with the Rules of Practice.

By direction of the Commission.

ORVAL L. DUBOIS
Secretary

31. During the course of the proceedings petitioner while in the midst of his cross examination of a witness was directed by the Trial Examiner to cease asking the witness any further questions, to which direction petitioner took due exception and refrained from asking any further questions because of inherent threats that he would be excluded from the hearing if petitioner insisted in propounding his questions. Petitioner has made proper application to the Commission to reverse these rulings, and same will be more fully hereinafter referred to.

32. On a Friday afternoon, during the course of the proceedings, and while petitioner was in the midst of his cross examination of another witness, at about 5:30 P. M. the Trial Examiner recessed the hearing for dinner with the direction that the hearing be continued at 8 P. M. that evening. Because of the unusual strain that petitioner's nervous system was subjected to during the course of the said day due to the rulings of the Trial Examiner, as appear more fully in the record, petitioner became seriously ill due to a choking spell caused by the enlargement of the thyroid gland in his throat which made it most imperative that he immediately leave Philadelphia and return to his home in New York City. With great physical difficulty, petitioner succeeded in returning to the hearing room of the Commission at 8 P. M. that evening and stated the facts on the record and petitioner explained to the Trial Examiner that it was physically im-

possible for petitioner to continue his cross examination of the witness and other witnesses that evening due to his sudden illness, as aforesaid, and petitioner requested the Examiner to adjourn the hearing until Tuesday, following, explaining that petitioner would be glad to return on Monday and continue his cross examination, but that petitioner was compelled to be present in the United States Circuit Court of Appeals, Second Circuit, to oppose two motions made by the Securities and Exchange Commission with respect to two petitions filed by petitioner in that Court. Petitioner was asked by the Trial Examiner whether he would be able to return the following day, Saturday, but petitioner answered that he was too ill to return the next day, and was too ill to even wait for the ruling of the Trial Examiner and would have to leave the hearing room before the Trial Examiner made any ruling. On Monday, following, petitioner learned that the Trial Examiner, the preceding Friday, when deponent became suddenly ill as aforesaid, denied deponent's request for an adjournment, and permitted the cross examination of the witness by this petitioner to be terminated in his absence, permitted other witnesses to be examined in petitioner's absence, adjourned the hearing late that evening to the next day, Saturday, when again witnesses were examined and cross examined in petitioner's absence due to his illness. Proper application was made to the Commission with respect to said actions of the Trial Examiner, and further reference is made hereinafter.

33. On or about June 28, 1944, there was served upon petitioner a draft of proposed Findings and Opinion recommended by the Public Utilities Division for adoption by the Commission together with Appendices to said draft. A comparison of said draft of proposed Findings and Opinion recommended by the Public Utilities Divi-

sion and the Appendices thereto, with Release No. 5271 of the Securities and Exchange Commission and Appendices thereto, which constitute the Findings and Opinion of the Commission, and its order dated the 8th day of September, 1944, indicates very clearly that the Findings and Opinion of the Commission in this matter including the Appendices thereto, are substantially the same as that recommended by its Public Utilities Division for adoption, and that the only material change in the proposed Findings and Opinion, pertain to that portion of the proposed Findings and Opinion wherein the Public Utilities Division of the Commission prepared an opinion for the Commission to deny petitioner's motions before it, so that the same was amended in form but continued in substance and conclusion, namely to deny petitioner's motions to set aside the rulings of the Trial Examiner.

34. Petitioner argued at length orally before the Commission in opposition to the proposed transaction wherein Electric Bond and Share Company contemplates selling to Electric Power & Light Corporation for the sum of $44,000,000, assets consisting of claims against the United Gas Corporation having a value of approximately $56,665,000, which said $44,000,000 it is intended shall be received by the Electric Power & Light Corporation from the United Gas Corporation by the latter purchasing from the Electric Power & Light Corporation 440,000 shares of $7 second preferred stock of the United Gas Corporation for the sum of $44,000,000. It is intended that this sum of $44,000,000 shall be part of the proceeds of the sale of the $100,000,000 bond issue by United Gas Corporation. Petitioner objected also to the use of $44,000,000 for the purchase of any such preferred stock. Petitioner further objected to the proposal of Electric

Bond and Share Company that it only use the open market as a place to purchase its preferred stock instead of also including tenders.

On the argument petitioner questioned the jurisdiction of the Securities and Exchange Commission with respect to the proposed plan of United Gas Corporation upon the ground that Section 11(b)(2) of the Public Utility Holding Company Act of 1935 specifically provides that except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company. The United Gas Corporation is not a holding company within the meaning of that term as contained in the Public Utility Holding Company Act of 1935 but is a public-utility company as defined in the said Act. The Electric Power & Light Corporation today owns the controlling voting power of the United Gas Corporation and under the plan as filed with the Commission which was the subject matter of said consolidated proceedings, the Electric Power & Light Corporation, if said plan is consummated, will continue to own the controlling interest in the United Gas Corporation, and as a matter of fact the controlling interest would be even greater than it is today. Obviously then the proposed plan does not contain a single provision respecting distribution of voting power among the security holders other than a provision to increase the voting power of the Electric Power & Light Corporation now in control of the said United Gas Corporation by reason of its large voting power due to the present ownership of large security interests in the said United Gas Corporation. It is obvious from the aforesaid that the plan

therefore does not contain any provisions for the purpose of fairly and equitably distributing power among the security holders of the United Gas Corporation, as such terms were intended by Congress when incorporated in the Public Utility Holding Company Act of 1935. Certainly Section 11(b)(2) of the said Act was not enacted to enable the Securities and Exchange Commission to approve any plan which increased the voting power of a holding company. Since Section 11(e) of the said Act provides that a plan may be filed by a registered holding company or its subsidiary for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b), and since the proposed plan does not come within any of the said provisions of said Section 11(e), in petitioner's opinion, petitioner is of the belief that the Securities and Exchange Commission had and has no jurisdiction with respect to the said plan of United Gas Corporation.

Section 26 of the Public Utility Holding Company Act of 1935 provides that nothing in said Act shall be construed to affect the validity of any loan or extension of credit made prior or subsequent to the enactment of the Act subject to the condition therein stated. Said section 26 further provides that nothing in the said Act shall be construed to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation or lien, subject to the conditions therein stated. It is petitioner's opinion that by reason of said Section 26, the Securities and Exchange Commission has no jurisdiction whatsoever with respect to the indebtedness of the United Gas Corporation to the Electric Bond and Share Company in the

sum of $56,665,000 and that the activities of the Securities and Exchange Commission and its staff in any way, shape or manner preventing the payment of the said obligations is in direct violation of the Public Utility Holding Company Act of 1935 and its expressed intent and purpose and in direct violation of the constitutional rights of this petitioner.

35. Petitioner submitted a lengthy brief in further support of his objections to the proposed plan, supplementing his oral argument.

36. On the 7th day of September, 1944, the Securities and Exchange Commission issued its findings and opinion (Release No. 5271) and its order dated the 7th day of September, 1944, which said order contained the following:

> IT IS ORDERED that the Plan be, and the same hereby is approved subject, however, to the condition that the applicants undertake to pay such fees and reimburse such expenses incurred or to be incurred in connection with said Plan, the transactions incident thereto and the consummation thereof, as are approved, allocated, or awarded by further order or orders of this Commission; and to the further conditions and reservations hereinafter set forth.
>
> IT IS FURTHER ORDERED that counsel for the Commission be, and they hereby are, authorized and directed to make application forthwith on behalf of the Commission to an appropriate United States District Court pursuant to the provisions of sub-section (f) of Section 18 of the Act to enforce and carry out the terms and provisions of the Plan.
>
> IT IS FURTHER ORDERED that this order shall not be operative to authorize the consummation of any

transactions proposed in the Plan until an appropriate United States District Court shall, upon application of the Commission, enter an order enforcing the Plan herein approved.

IT IS FURTHER ORDERED that the declaration of Bond and Share under Section 12(c) with respect to the acquisition of a portion of its outstanding $5 and $6 preferred stocks be, and the same hereby is, permitted to become effective forthwith subject to the terms and conditions prescribed in Rule U-24 and to the further terms and conditions that:

(1) All purchases shall be effected on the New York Curb Exchange except that the company may purchase large blocks of stock otherwise on said Exchange provided that notice of intention to effect each such purchase together with a statement of the identity of the seller, the price proposed to be paid, and any fees or commissions to be incurred in connection therewith shall have been given to the Commission and the company shall not have been informed by the Commission that it intends to issue an order to show cause why such purchase should not be consummated. The company shall not solicit or cause to be solicited the sale of any shares to the company either on or off the said Exchange;

(2) The company shall furnish to the Commission promptly at the end of each week a report showing the number of shares of each class of preferred stock purchased each day during the week, the prices at which they were purchased and the names of the brokers through whom they were purhased;

(3) The company shall include in its quarterly reports to stockholders information as to the total

number of shares of each class purchased and the aggregate purchase price for each class;

(4) No purchases shall be made after twelve months from the date of the receipt of the cash under the Plan subject, however, to the right of the company to apply for an extension or extensions of such period;

(5) The company shall advise by letter the holders of record of its preferred stock fully with respect to its intention to make such purchases and the method to be employed and the Commission reserves jurisdiction with respect to the form and contents of such notice and any similar communications;

(6) All shares of preferred stock acquired by the Company pursuant to the present declaration and order shall be retired and cancelled;

(7) The company shall have the right to file substitute or additional programs with respect to the use of all or any portion of the funds which are the subject of the application, and jurisdiction is hereby reserved to require the company to make such filings or to take such other action as may be necessary or appropriate the provisions of the Act; and

(8) The Commission reserves jurisdiction in its discretion to rescind or modify its order, any such rescission or modification to be applicable to such portion of the cash permitted to be employed for such purchases pursuant to the proposals herein as shall not have been previously expended.

IT IS FURTHER ORDERED that the joint application and declaration of United and United Gas Pipe Line Company, as amended, with respect to the issuance

of $100,000,000 principal amount of First Mortgage and Collateral Trust Bonds, under Sections 6, 7, 9(a), 10, 11(b), and 12 of the Act be, and the same hereby is, granted and permitted to become effective, except as to the issues concerning the terms and conditions of the bonds proposed to be issued and sold by United and United Gas Pipe Line Company and the fees and expenses to be incurred in connection with said proposed issuance and sale as to which matters jurisdiction be, and the same hereby is, specifically reserved, subject, however, to the terms and conditions contained in Rule U-24.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is reserved:

(1) To consider, determine and take appropriate action with respect to all issues involved in United Gas Corporation, et al., File Nos. 70-314, 70-315, 59-21 and 4-33, except those disposed of herein;

(2) To entertain such further proceedings, to make such further and supplemental findings and to take such additional action as may be found to be appropriate in the premises in connection with the said Plan and the several transactions incident to the consummation thereof;

IT IS FURTHER ORDERED that the issues, distributions, transfers, and exchanges of securities, and the transactions, specified and itemized below all as provided by the Plan are necessary or appropriate to the integration and simplification of the holding company system of which United is a member and necessary or appropriate to effectuate the provisions of subsection (b) of Section 11 of the Public Utility Holding Company Act of 1935:

(1) The sale and transfer by Bond and Share and the acquisition by Electric for a cash purchase price of $44,000,000 of all the claims in and against United held by Bond and Share as follows: $25,000,000 principal amount of 6% debentures due 1953 of United Gas Public Service Company assumed by United; 6% demand note in the principal amount of $25,925,000; 6% open account of indebtedness of $2,000,000; 17,310 shares of $7 preferred stock, 752,666 shares of common stock, 151,005 option warrants for the purchase of common stock of United; and $440,000 principal amount of 5% Collateral Trust Gold Bonds of Houston Gas Securities Company assumed by United.

(2) The surrender by Electric and the acquisition and cancellation by United of 17,310 shares of $7 preferred stock of United together with all rights to accumulated and undeclared dividends thereon acquired by Electric from Bond and Share in the transaction described in paragraph (1) above.

(3) The redemption and cancellation by United of 432,512 shares of its $7 preferred stock at their redemption price of 110 per share plus accumulated dividends thereon to the redemption date.

(4) The declaration, issuance and distribution by United of a dividend on its $7 second preferred stock, all of which is held by Electric, of 12,385,520 shares of its $1 par value common stock and the acceptance by Electric of such stock dividend in payment of $12,385,520 of accumulated and unpaid dividends on such stock.

(5) The surrender by Electric and the acquisition and cancellation by United of 440,680 shares of $7

second preferred stock of United together with all rights to accumulated and undeclared dividends thereon and the issuance and delivery to Electric in exchange therefor of 44,468,000 shares of the $1 par value common stock of United.

(6) The sale and transfer by Electric and the acquisition for cancellation by United in exchange for $44,000,000 in cash of 440,000 shares of second preferred stock of United having a stated value of $44,000,000 and together with the right to accumulated and unpaid dividends on such stock.

(7) The payment by Electric of the $44,000,000 received by it in the transactions described in paragraph (6) above to Bond and Share.

(8) The surrender by Electric and the acquisition by United as a contribution to capital of the securities and open account of indebtedness of United acquired by Electric from Bond and Share as described in paragraph (1) above together with option warrants for the purchase of 3,600,040 shares of common stock of United held by Electric exclusive of the 17,310 shares of $7 preferred stock of United previously surrendered as described in paragraph (2), above.

(9) The redemption and retirement by United of $3,460,000 principal amount of 5% Collateral Trust Gold Bonds of Houston Gas Securities Company due March 1, 1952 assumed by United.

(10) The issuance and distribution by United of 42,613,209 shares of its $1 par value common stock as a common stock dividend of two-thirds of a share of $1 par value common stock on each share of such stock outstanding and the acceptance thereof by the common stockholders of United, and in connection

therewith the transfer from capital surplus to stated capital of the sum of $42,613,209 to cover the capital liability to be represented by the additional shares of stock to be issued and to render such shares fully paid and nonassessable.

(11) The issuance and distrbution by United of 10,653,302.2 shares of $10 par value common stock and the transfer and exchange of such shares by United and its common stockholders for the outstanding 106,533,022 shares of $1 par value common stock of United or in exchange for scrip of United.

(12) The issuance, transfer and exchange of scrip of United and the issuance and transfer of $10 par value stock of said company in exchange therefor to the extent necessary to carry out the plan.

(13) All other transfers and exchanges of common stock and scrip of United which are required in order to carry out the Plan.

(14) The revocation, abrogation and cancellation of all outstanding option warrants for the purchase of common stock of United.

(15) The issuance and sale by United of $100,000,000 principal amount of First Mortgage and Collateral Trust Bonds, and the issuance by United Gas Pipe Line Company of $23,000,000 principal amount of its First Mortgage Bonds, subject to the reservations and conditions hereinbefore set forth.

37. It is petitioner's opinion that the said order dated the 7th day of September, 1944, which this petitioner seeks a review of, is detrimental to the interests of the stockholders of the Electric Bond and Share Company, that the Securities and Exchange Commission has no

statutory authority to make said order and that said order is violative of the provisions of the Public Utility Holding Company Act of 1935 and its expressed intent and purport; that the Electric Bond and Share Company, without the consent of the holders of two-thirds of its outstanding stock entitled to vote thereon obtained at a meeting of the stockholders of that company called pursuant to Section 45 of the Stock Corporation Law of the State of New York, has no power or authority to sell the claims against and the securities of the United Gas Corporation having a value of approximately $56,665,000 to the Electric Power & Light Corporation for the sum of $44,000,000, and that any such sale without such consent is void and in violation of Section 20 of the Stock Corporation Law of the State of New York; that the Electric Bond and Share Company has no power to consent to the various other transactions proposed in the said plan including the purchase by United Gas Corporation of $44,000,000 in second preferred stock of the United Gas Corporation with the proceeds of the proposed bond issue by that corporation, to that extent, and to pay that amount to Electric Power & Light Corporation, such purchase constituting a subordination of the claims of Electric Bond and Share Company to that of the Second Preferred Stock so to be purchased; that Electric Bond and Share Company has no authority to consent to the other proposed transactions which are detrimental to the interests of the Electric Bond and Share Company and its stockholders; that the Securities and Exchange Commission has no authority to approve the proposed transactions and to approve the proposed plan and the approval of the proposed transactions and the approval of the plan is in violation of the Public Utility Holding Company Act of 1935 and its expressed intent and purpose; that the Securities and Exchange Commission has no power or authority to inter-

fere with the payment to the Electric Bond and Share Company by the United Gas Corporation of the full amount of approximately $56,665,000 owing by it to the Electric Bond and Share Company and the collection by the said Electric Bond and Share Company when due of the full amount of approximately the sum of $56,665,000 from the United Gas Corporation and the Electric Bond and Share Company is entitled to retain its stock interests in the United Gas Corporation if said corporation decides to only pay its outstanding debts to the Electric Bond and Share Company in the sum of $53,365,000; and under those circumstances the Electric Bond and Share Company is not to be discriminated against and the Securities and Exchange Commission has no power or authority to direct that the similar securities held by the public in the United Gas Corporation shall be preferred over the securities of the United Gas Corporation owned by the Electric Bond and Share Company.

38. Upon information and belief that the Electric Power & Light Corporation dominates and controls the United Gas Corporation and that Electric Bond and Share Company dominates anad controls the Electric Power & Light Corporation.

39. Upon information and belief that the officers and directors of the Electric Bond and Share Company authorized the joining by the Electric Bond and Share Company in the filing of the said plan of the United Gas Corporation and that any demand by the petitioner upon the said Electric Bond and Share Company and its directors, to seek review of the said order of the Securities and Exchange Commission, under the circumstances, would be futile.

40. Petitioner further states that it is his opinion that the order of the Securities and Exchange Commission

dated the 7th day of September, 1944, deprives petitioner of his property without due process of law and in violation of the Constitution of the United States.

41. It is petitioner's further opinion that the Securities and Exchange Commission has no power or statutory authority to in any way, shape or manner interfere with the purchase by the Electric Bond and Share Company of its own preferred stock with its own cash or other assets, or to order the cancellation and retirement of any such preferred stock purchased, or to direct that any particular plan be adopted for the elimination of such stock, and that the Electric Bond and Share Company has the legal right to purchase its own preferred stock with its own assets in accordance with the laws of the State of New York under which said corporation was organized without any interference whatsoever from the Securities and Exchange Commission or its staff.

WHEREFORE, petitioner respectfully prays this Circuit Court of Appeals, in and for the Second Circuit, to review the said order of the Securities and Exchange Commission dated the 7th day of September, 1944, hereinbefore more fully referred to, pursuant to the authority vested in the said Circuit Court by Section 24(a) of the Public Utility Holding Company Act of 1935, and that upon said review said order, and each and every part thereof, pertaining to Electric Bond and Share Company, Electric Power & Light Corporation, United Gas Corporation and United Gas Pipe Line Company, be set aside, as without authority in law and contrary to law, and contrary to the provisions of the Public Utility Holding Company Act of 1935, and its expressed intent and purpose, and the Stock Corporation Law of the State of New York; and upon the ground that the Securities and Ex-

change Commission had no power or authority to make said order, and upon the ground that the said order is detrimental to the interests of the Electric Bond and Share Company and its stockholders; and upon the further grounds that the said order of the Securities and Exchange Commission violates the constitutional rights of the said Electric Bond and Share Company and its stockholders, and the petitioner is being deprived of his property without due process of law in violation of the Constitution of the United States; and petitioner further prays that this Circuit Court make an order granting leave to this petitioner to adduce the additional evidence which he sought to adduce upon the hearing but was prevented by the rulings of the Trial Examiner as sustained by the order of the Commission and directing that such additional evidence, which is material and necessary, be taken before the Commission and adduced as provided in said Section 24(a) of the Public Utility Holding Company Act of 1935; and petitioner further prays for such other and further relief in the premises as to the Court may seem just and proper under the provisions of Section 24(a) of the Public Utility Holding Company Act of 1935.

Dated, New York, September 20, 1944.

SAMUEL OKIN,
Petitioner.

(Duly verified.)

Notice of Motion to Dismiss Petition for Review.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 19496

[TITLE OMITTED]

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Morton E. Yohalem, the undersigned will move this Court at a term thereof to be held on October 2, 1944, at the opening of Court in the forenoon of that day, or as soon thereafter as counsel can be heard, at the Federal Court House, Foley Square, New York City, New York, for an order dismissing the Petition to Review an order of the Securities and Exchange Commission issued on September 7, 1944 approving a plan pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935, filed by United Gas Corporation and joined in by Electric Power & Light Corporation and Electric Bond and Share Company, and permitting certain declarations to become effective and granting certain applications, and for such further relief as may be appropriate.

Dated: Philadelphia, Pa., September 27, 1944.

ROGER S. FOSTER, Solicitor,
Securities and Exchange Commission.

MORTON E. YOHALEM, Counsel,
Public Utilities Division
Counsel for the Securities and
Exchange Commission,
18th and Locust Streets,
Philadelphia, Pennsylvania.

Notice of Motion to Dismiss Petition for Review.

To:

SAMUEL OKIN, Esq.,
32 Broadway,
New York, N. Y.

REID & PRIEST, Esqs., and
GEORGE T. NAFF, Esq.,
Attorneys for United Gas Corporation, et al.,
2 Rector Street,
New York City, N. Y.

WRIGHT, GORDON, ZACHRY, PARLIN & CAHILL, Esqs.,
Attorneys for Electric Power & Light Corporation,
63 Wall Street,
New York City, N. Y.

SIMPSON, THACHER & BARTLETT,
Attorneys for Electric Bond and Share Company,
120 Broadway,
New York City, N. Y.

Affidavit of Morton E. Yohalem in Support of Motion to Dismiss.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

No.

[TITLE OMITTED]

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.

MORTON E. YOHALEM being duly sworn deposes and says:

1. Deponent is Counsel to the Public Utilities Division of the Securities and Exchange Commission (Commission), and is familiar with the facts and circumstances of this case.

2. This affidavit is submitted in support of the motion of the Commission, to dismiss the Petition to Review the order of the Commission dated September 7, 1944 (Holding Company Act Release No. 5271) approving a plan pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 (Act), filed by United Gas Corporation and joined in by Electric Power & Light Corporation and Electric Bond and Share Company, and permitting certain declarations to become effective, and granting applications.

3. The primary basis of said motion is that the order will not become effective to authorize any action whatsoever until after further proceedings in the United States District Court for the District of Delaware, pursuant to the

provisions of Section 11(e) of the Act which provides in pertinent part:

> "If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; * * *"

Application to enforce and carry out said plan was made by the Commission prior to the filing of the petitions for review herein, in accordance with the foregoing provision of the Act. It is the Commission's position that the provisions for judicial examination of the merits of such plan in the enforcement proceedings, and for appeal from any order of the District Court under Section 225 of the Judicial Code, are here applicable to the exclusion of the procedure specified in Section 24(a) as generally applicable for the review of any orders of the Commission. It is further urged that petitioner is not aggrieved by the order of the Commission.

4. Annexed hereto as "Appendix A", and made a part hereof as if fully set forth herein, is a copy of the Plan of

Reorganization under Section 11(e) of the Act, as filed by United Gas Corporation and joined in by Electric Power & Light Corporation and Electric Bond and Share Company, and as approved by the Commission. On page 10 of said "Exhibit A" and under the portion designated "Part V—Conditions and Reservations" appears the following:

"The effectuation of the Plan is subject to the following conditions and reservations:

"A. The Plan shall have been found by the Commission to be necessary to effectuate the provisions of subsection (b) of Section 11 of the Act and to be fair and equitable to the persons affected thereby, and each step in the carrying out and consummation of the Plan shall have been approved by order of the Commission.

"B. The Commission shall have instituted a proceeding in a court of competent jurisdiction pursuant to Section 11(e) of the Act and such court shall have entered a final decree or order finding the Plan to be fair and equitable and appropriate to effectuate the provisions of Section 11 of the Act, and such court shall have taken action to enforce and carry out the terms and provisions of the Plan.

"C. The Securities and Exchange Commission and the court referred to above in paragraph B shall have taken action to render effective the settlement and discharge of the various claims and counterclaims in accordance with Part III.

"D. The Securities and Exchange Commission and the court referred to above in paragraph B shall have taken action effectively cancelling the option warrants for the purchase of Common Stock of United, which are outstanding in the hands of Bond and Share, Electric and the public."

5. Annexed hereto as "Appendix B", and made a part hereof as if fully set forth herein, is a copy of the Findings, Opinion and Order of the Commission, dated September 7, 1944 (Holding Company Act Release No. 5271) approving the plan annexed hereto as "Exhibit A" and referred to above, which order is the subject of the present Petition for Review. On page 41 of said "Exhibit B", constituting the third page of said Order as the second, third and fourth full paragraphs on said page appears the following:

> "IT IS ORDERED that the Plan be, and the same hereby is approved subject, however, to the condition that the applicants undertake to pay such fees and reimburse such expenses incurred or to be incurred in connection with said Plan, the transactions incident thereto and the consummation thereof, as are approved, allocated, or awarded by further order or orders of this Commission; and to the further conditions and reservations hereinafter set forth.
>
> "IT IS FURTHER ORDERED that counsel for the Commission be, and they hereby are, authorized and directed to make application forthwith on behalf of the Commission to an appropriate United States District Court pursuant to the provisions of sub-section (f) of Section 18 of the Act to enforce and carry out the terms and provisions of the Plan.
>
> "IT IS FURTHER ORDERED that this Order shall not be operative to authorize the consummation of any transactions proposed in the Plan until an appropriate United States District Court shall, upon application of the Commission, enter an order enforcing the Plan herein approved."

6. Annexed hereto as "Exhibit C" and made a part hereof as if fully set forth herein, is a copy of the applica-

tion of the Commission, signed by deponent as attorney for said Commission to the United States District Court for the District of Delaware, to enforce the plan annexed hereto as "Exhibit A" and referred to above.

7. Annexed hereto as "Exhibit D" and made a part hereof as if fully set forth herein, is the order of Honorable Paul Leahy, United States District Judge for the District of Delaware, of September 8, 1944, directing that a hearing be held before him on September 29, 1944 at 10:30 a. m.

> "• • • for the purpose of determining whether the plan dated March 1, 1944 proposed by United Gas Corporation, Electric Bond and Share Company and Electric Power & Light Corporation pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 is fair and equitable and appropriate to effectuate the provisions of Section 11(b) of the Public Utility Holding Company Act of 1935, and whether the Court should enforce and carry out the terms and provisions of the plan and for such other purposes as may appear necessary or appropriate in the premises;"

8. To the best of deponent's knowledge and belief the documents set forth as Exhibits "A", "B", "C" and "D" are true and correct copies of the documents of which they purport to be copies as set forth above herein.

MORTON E. YOHALEM.

Sworn to before me this 27th day of September, 1944.
Notary Public.
My commission expires Mar. 7, 1947.

Part of Exhibit B.

UNITED STATES OF AMERICA

BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 7th day of September, A. D., 1944.

In the Matter of

UNITED GAS CORPORATION
UNITED GAS PIPE LINE COMPANY
HOUSTON GULF GAS COMPANY

File No. 70-314

In the Matter of

ELECTRIC BOND AND SHARE COMPANY

File No. 70-315

In the Matter of

ELECTRIC BOND AND SHARE COMPANY
ELECTRIC POWER & LIGHT CORPORATION
UNITED GAS CORPORATION
HOUSTON GAS SECURITIES COMPANY
UNITED GAS PIPE LINE COMPANY
HOUSTON GULF GAS COMPANY

File No. 59-21

(Public Utility Holding Company Act of 1935 Sections 11(b)(2), 12(b), 12(c) and 12(f))

In the Matter of

INVESTIGATION OF ORGANIZATION AND FINANCING OF UNITED GAS CORPORATION., ETC.

File No. 4-33

(Public Utility Holding Company Act of 1935 Sections 18(a) and 18(b))

ORDER APPROVING PLAN PURSUANT TO SECTION 11(e) PERMITTING DECLARATIONS TO BECOME EFFECTIVE AND GRANTING APPLICATIONS

Part of Exhibit B.

In the Matter of

UNITED GAS CORPORATION
ELECTRIC POWER & LIGHT CORPORATION
ELECTRIC BOND AND SHARE COMPANY

File No. 54-91

In the Matter of

ELECTRIC BOND AND SHARE COMPANY

File No. 70-868

(Public Utility Holding Company Act of 1935)

United Gas Corporation ("United") having filed with the Commission an application for approval of a Plan, as amended (hereinafter referred to as the "Plan"), pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 (the "Act") and Electric Bond and Share Company ("Bond and Share") and Electric Power & Light Corporation ("Electric") having joined in said Plan with respect to all transactions affecting them provided for therein; and

United, Bond and Share and Electric having requested the Commission pursuant to Section 11(e) of the Act, if it approved the Plan, to apply to a Court in accordance with the provisions of sub-section (f) of Section 18 of the Act to enforce and cary out the terms and provisions of said Plan; and

Bond and Share having filed a declaration under Section 12(c) of the Act seeking approval of the use of all or any part of the cash proceds to be received by it under the Plan for the acquisition and retirement of its preferred stocks

and having conditioned its joinder in the Plan upon the issuance of an order of the Commission permitting said declaration under Section 12(c) to become effective; and

United and certain of its subsidiaries having filed a joint application and declaration pursuant to Sections 6, 7, 9(a), 10 and 12 of the Act for approval of a series of transactions incident to the refinancing of United (File No. 70-314), and in connection with the filing of said Plan having filed an amendment to the joint application and declaration to provide for the issuance and sale of $100,000,000 principal amount of First Mortgage and Collateral Trust Bonds and the use of the proceeds of such sale for the redemption of its publicly held $7 preferred stock, the purchase of a portion of its outstanding second preferred stock and the redemption of the publicly held 5% Collateral Trust Gold Bonds assumed by United, as contemplated in said Plan and for the issuance and sale by United Gas Pipe Line Company, a wholly-owned subsidiary of United, of $23,000,000 principal amount of its First Mortgage Bonds, all of which will be issued to United in exchange for a like principal amount of United Gas Pipe Line's 6% Debentures owned by United which debentures will be cancelled; and

The Commission having on March 6, 1944 issued its Notice and Order for Hearing on said application and Plan under Section 11(e) on said declaration under Section 12(c) and having directed the consolidation of the proceedings thereon with each other and with a prior consolidated proceeding involving, among other matters, applications and declarations under Sections 6, 7, 9(a), 10 and 12 of the Act for the refinancing of United and proceedings instituted by the Commission under Sections 11(b)(2), 12(b), 12(c), 12(f), 18(a) and 18(b) of the Act (File Nos. 70-314, 70-315, 59-21, 4-33); and

A copy of said Notice and Order for Hearing on March 6th, 1944 having been mailed to all security holders of the

applicant (insofar as the identity of such security holders was known or available), notice having been duly given to all interested persons, all persons having been given an opportunity to be heard with respect to all matters pertaining to said proceedings, public hearings having been held, the staff of the Public Utilities Division of the Commission having prepared and filed a draft of the proposed Findings and Opinion and having recommended its adoption by the Commission, copies of the draft of the proposed Findings and Opinion having been served on all parties and persons who appeared and participated in the proceedings, an opportunity having been afforded to each of them to file a written statement of objections to all or any part thereof, briefs and answering briefs having been filed and the Commission having heard oral argument, and the Commission having this day issued and filed its Findings and Opinion herein; and

United, Bond and Share and Electric having requested that the Commission's order conform to and set forth the recitals specified in Sections 371 and 1808(f) of the Internal Revenue Code as amended;

IT IS ORDERED that the Plan be, and the same hereby is approved subject, however, to the condition that the applicants undertake to pay such fees and reimburse such expenses incurred or to be incurred in connection with said Plan, the transactions incident thereto and the consummation thereof, as are approved, allocated, or awarded by further order or orders of this Commission; and to the further conditions and reservations hereinafter set forth.

IT IS FURTHER ORDERED that counsel for the Commission be, and they hereby are, authorized and directed to make application forthwith on behalf of the Commission to an appropriate United States District Court pursuant to the

provisions of sub-section (f) of Section 18 of the Act to enforce and carry out the terms and provisions of the Plan.

IT IS FURTHER ORDERED that this order shall not be operative to authorize the consummation of any transactions proposed in the Plan until an appropriate United States District Court shall, upon application of the Commission, enter an order enforcing the Plan herein approved.

IT IS FURTHER ORDERED that the declaration of Bond and Share under Section 12(c) with respect to the acquisition of a portion of its outstanding $5 and $6 preferred stocks be, and the same hereby is, permitted to become effective forthwith subject to the terms and conditions prescribed in Rule U-24 and to the further terms and conditions that:

(1) All purchases shall be effected on the New York Curb Exchange except that the company may purchase large blocks of stock otherwise than on said Exchange provided that notice of intention to effect each such purchase together with a statement of the identity of the seller, the price proposed to be paid and any fees or commissions to be incurred in connection therewith shall have been given to the Commission and the company shall not have been informed by the Commission that it intends to issue an order to show cause why such purchase should not be consummated. The company shall not solicit or cause to be solicited the sale of any shares to the company either on or off the said Exchange;

(2) The company shall furnish to the Commission promptly at the end of each week a report showing the number of shares of each class of preferred stock purchased each day during the week, the prices at which they were purchased and the names of the brokers through whom they were purchased;

(3) The company shall include in its quarterly reports to stockholders information as to the total number of shares of each class purchased and the aggregate purchase price for each class;

(4) No purchase shall be made after twelve months from the date of the receipt of the cash under the Plan subject, however, to the right of the company to apply for an extension or extensions of such period;

(5) The company shall advise by letter the holders of record of its preferred stock fully with respect to its intention to make such purchases and the method to be employed and the Commission reserves jurisdiction with respect to the form and contents of such notice and any similar communications;

(6) All shares of preferred stock acquired by the Company pursuant to the present declaration and order shall be retired and cancelled;

(7) The company shall have the right to file substitute or additional programs with respect to the use of all or any portion of the funds which are the subject of the application, and jurisdiction is hereby reserved to require the company to make such filings or to take such other action as may be necessary or appropriate under the provisions of the Act; and

(8) The Commission reserves jurisdiction in its discretion to rescind or modify its order, any such rescission or modification to be applicable to such portion of the cash permitted to be employed for such purchases pursuant to the proposals herein as shall not have been previously expended.

IT IS FURTHER ORDERED that the joint application and declaration of United and the United Gas Pipe Line Company, as amended, with respect to the issuance of $100,000,000

principal amount of First Mortgage and Collateral Trust Bonds, under Sections 6, 7, 9(a), 10, 11(b), and 12 of the Act be, and the same hereby is, granted and permitted to become effective, except as to the issues concerning the terms and conditions of the Bonds proposed to be issued and sold by United and United Gas Pipe Line Company and the fees and expenses to be incurred in connection with said proposed issuance and sale as to which matters jurisdiction be, and the same hereby is, specifically reserved, subject, however, to the terms and conditions contained in Rule U-24.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved:

(1) To consider, determine and take appropriate action with respect to all issues involved in United Gas Corporation, et al., File Nos. 70-314, 70-315, 59-21 and 4-33, except those disposed of herein;

(2) To entertain such further proceedings, to make such further and supplemental findings and to take such additional action as may be found to be appropriate in the premises in connection with the said Plan and the several transactions incident to the consummation thereof:

IT IS FURTHER ORDERED that the issues, distributions, transfers, and exchanges of securities, and the transactions, specified and itemized below all as provided by the Plan are necessary or appropriate to the integration and simplification of the holding company system of which United is a member and necessary or appropriate to effectuate the provisions of subsection (b) of Section 11 of the Public Utility Holding Company Act of 1935:

(1) The sale and transfer by Bond and Share and the acquisition by Electric for a cash purchase price of $44,000,000 of all the claims in and against United held by Bond

and Share as follows: $25,000,000 principal amount of 6% Debentures due 1953 of United Gas Public Service Company assumed by United; 6% demand note in the principal amount of $25,925,000; 6% open account of indebtedness of $2,000,000; 17,310 shares of $7 preferred stock, 752,666 shares of common stock, 151,005 option warrants for the purchase of common stock of United; and $440,000 principal amount of 5% Collateral Trust Gold Bonds of Houston Gas Securities Company assumed by United.

(2) The surrender by Electric and the acquisition and cancellation by United of 17,310 shares of $7 preferred stock of United together with all rights to accumulated and undeclared dividends thereon acquired by Electric from Bond and Share in the transaction described in paragraph (1) above.

(3) The redemption and cancellation by United of 432,512 shares of its $7 preferred stock at their redemption price of $110 per share plus accumulated dividends thereon to the redemption date.

(4) The declaration, issuance and distribution by United of a dividend on its $7 second preferred stock, all of which is held by Electric, of 12,385,520 shares of its $1 par value common stock and the acceptance by Electric of such stock dividend in payment of $12,385,520 of accumulated and unpaid dividends on such stock.

(5) The surrender by Electric and the acquisition and cancellation by United of 444,680 shares of $7 second preferred stock of United together with all rights to accumulated and undeclared dividends thereon and the issuance and delivery to Electric in exchange therefor of 44,468,000 shares of the $1 par value common stock of United.

(6) The sale and transfer by Electric and the acquisition for cancellation by United in exchange for $44,000,000 in

cash of 440,000 shares of second preferred stock of United having a stated value of $44,000,000 and together with the right to accumulated and unpaid dividends on such stock.

(7) The payment by Electric of the $44,000,000 received by it in the transaction described in paragraph (6) above to Bond and Share.

(8) The surrender by Electric and the acquisition by United as a contribution to capital of the securities and open account of indebtedness of United acquired by Electric from Bond and Share as described in paragraph (1) above together with option warrants for the purchase of 3,600,040 shares of common stock of United held by Electric exclusive of the 17,310 shares of $7 perferred stock of United previously surrendered as described in paragraph (2) above.

(9) The redemption and retirement by United of $3,460,000 principal amount of 5% Collateral Trust Gold Bonds of Houston Gas Securities Company due March 1, 1952 assumed by United.

(10) The issuance and distribution by United of 42,613,209 shares of its $1 par value common stock as a common stock dividend of two-thirds of a share of $1 par value common stock on each share of such stock outstanding and the acceptance thereof by the common stockholders of United, and in connection therewith the transfer from capital surplus to stated capital of the sum of $42,613,209 to cover the capital liability to be represented by the additional shares of stock to be issued and to render such shares fully paid and non-assessable.

(11) The issuance and distribution by United of 10,653,302.2 shares of $10 par value common stock and the transfer and exchange of such shares by United and its common stockholders for the outstanding 106,533,022 shares of $1

par value common stock of United or in exchange for scrip of United.

(12) The issuance, transfer and exchange of scrip of United and the issuance and transfer of $10 par value common stock of said company in exchange therefor to the extent necessary to carry out the plan.

(13) All other transfers and exchanges of common stock and scrip of United which are required in order to carry out the Plan.

(14) The revocation, abrogation and cancellation of all outstanding option warrants for the purchase of common stock of United.

(15) The issuance and sale by United of $100,000,000 principal amount of First Mortgage and Collateral Trust Bonds, and the issuance by United Gas Pipe Line Company of $23,000,000 principal amount of its First Mortgage Bonds, subject to the reservations and conditions hereinbefore set forth.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

(SEAL)

Exhibit C.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF DELAWARE.

IN THE MATTER OF UNITED GAS CORPORATION, ELECTRIC BOND AND SHARE COMPANY *and* ELECTRIC POWER & LIGHT CORPORATION	A Proceeding to Enforce a Plan Pursuant to Section 11(e) and 18(f) of the Public Utility Holding Company Act of 1935. Civil Action 471.

TO THE HONORABLE THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

The Securities and Exchange Commission, by its attorney, respectfully states:

(1) The applicant, Securities and Exchange Commission (hereinafter sometimes referred to as the "Commission") is an agency and instrumentality of the United States created by and organized pursuant to Section 4 of the Securities Exchange Act of 1934, being Title I of an Act of Congress approved June 6, 1934, 48 Stat. 885, 15 U. S. C. Sec. 73(d).

(2) This application is made pursuant to the authority vested in the Commission and the jurisdiction vested in this Court by Sections 11(e), 18(f) and 25 of the Public Utility Holding Company Act of 1935 (hereinafter sometimes referred to as the "Act"), being Title I of an Act of Congress approved August 26, 1935, 49 Stat. 803, 15 U. S. C. Sec. 79(a), *et seq.*

Exhibit C.

(3) United Gas Corporation (hereinafter sometimes referred to as "United") is a corporation organized under the laws of the State of Delaware, and is a public utility company within the meaning of Section 2(a)(5) of the Act. Electric Bond and Share Company (hereinafter sometimes referred to as "Bond and Share") is a corporation organized under the laws of the State of New York and is a holding company within the meaning of Section 2(a)(7) of the Act. Electric Power & Light Corporation (hereinafter sometimes referred to as "Electric") is a corporation organized under the laws of the State of Maine and is a holding company within the meaning of Section 2(a)(7) of the Act. Bond and Share and Electric have filed notifications of registration under Section 5(a) of the Act and are registered holding companies under the Act. United is a subsidiary of Electric, which in turn is a subsidiary of Bond and Share within the meaning of Section 2(a)(8) of the Act.

(4) On March 6, 1944, United filed an application with the Commission for approval of a plan dated March 1, 1944, under Section 11(e) of the Act and Bond and Share and Electric joined in said plan with respect to all transactions therein affecting them. The joinder of Bond and Share in said plan was conditioned upon permission being granted to it to employ the $44,000,000 to be received by it under the plan in the acquisition of its preferred stock. Pursuant to order of the Commission public hearings were held thereon. On June 14, 1944, a joint supplemental application dated as of June 13, 1944 was filed with the Commission.

(5) On March 6, 1944, the Commission entered an order for hearing on the plan which required that notice of such hearing be given to all security holders of United,

Electric and Bond and Share (insofar as the identity of such security holders is known or available to them) by mailing to each of said persons a copy of the order for hearing at his last-known address at least 20 days prior to the date of hearing. Notice of said hearing was also published in the Federal Register, was published by the Commission as Holding Company Act Release No. 4926 (a copy of which is attached hereto and marked "Exhibit A"), was mailed to all persons on the Commission's mailing list for releases under the Act, and was released to the press. The requirements of the Commission's order as to the giving of said notice to such persons were complied with.

(6) The plan provides in substance for the elimination from the security structure of United of its entire existing debt, preferred stock, second preferred stock and accumulated dividend arrearages on the preferred and second preferred stocks and the issuance of $100,000,000 of First Mortgage Debt as the sole senior security in the structure of United; the elimination of the presently outstanding common stock of United having a par value of $1 per share and the issuance of 10,633,302.2 shares of common stock having a par value of $10 and the cancellation of the outstanding option warrants.

(7) As a result of the action contemplated in and proposed by the plan, Bond and Share would be divested of all its claims against and interest in United including its debt claims and holdings of preferred stock with accumulated arrearages thereon, common stock and option warrants and would receive cash in the amount of $44,000,000. Electric would be divested of all of the $7 second preferred stock of United, the entire issue of

which is owned by it, plus accumulated dividend arrearages thereon as well as its present common stockholdings and option warrants and would receive 10,108,101 shares of new $10 par value common stock. The public holders of common stock in lieu of their 3,271,207 shares of present common stock of an aggregate par value of $3,271,207 would receive 545,201.2 shares of new common stock of an aggregate par value of $5,452,012. The publicly-held $7 preferred stock would be redeemed at the redemption price of $110 per share plus accumulated and unpaid dividends and the option warrants would not participate in the plan and would be cancelled.

(8) Pursuant to the Commission's order dated March 6, 1944 ("Exhibit A"), public hearings were held on the plan at which certain holders of common stock of United and common and preferred stocks of Bond and Share and Electric appeared and participated. Thereafter, the staff of the Public Utilities Division of the Commission prepared and filed a draft of Proposed Findings and Opinion and recommended its adoption by the Commission. Copies of the draft of the Proposed Findings and Opinion were served on all parties and persons who appeared and participated in the proceedings. An opportunity was afforded to each of them to file a written statement of objections to all or any part thereof. Briefs and answering briefs were filed and the Commission heard oral argument. On September 7, 1944, the Commission entered its Findings and Order (a copy of which is attached hereto and marked "Exhibit B") approving the plan, and granting the request of the applicants pursuant to Section 11(e) of the Act, and permitting Bond and Share to employ the $44,000,000 to be received by it under the plan in the acquisition of its preferred stock.

Exhibit C.

(9) The Commission makes this application to the Court to enforce and carry out the plan at the request of United, Electric and Bond and Share. A copy of the plan is attached hereto and marked "Exhibit C".

(10) Numerous actions were commenced in the Supreme Court of the State of New York and in United States Federal Courts by stockholders of United and Electric, raising some of the same issues which were being investigated by the staff of the Commission and which were the subject of the proceedings before the Commission instituted on May 31, 1941. These actions in the Courts are as follows:

Title of Action	*Court*	*Plaintiff*
William Weinberger, et al., Plaintiffs, v. Serge Semenenko, et al., Defendants	Supreme Court of the State of New York, New York County	Common Stockholder of United
Louis Levy, Plaintiff, v. Earle Bailie, et al., Defendants	Supreme Court of the State of New York, Kings County	Common Stockholder of United
Philip Steiger, Plaintiff, v. Margaret Henderson Bailee, et al., Defendants	Supreme Court of the State of New York, New York County	Common Stockholder of United
Jack Levine, Plaintiff, v. Earle Bailie, et al., Defendants	Supreme Court of the State of New York, Kings County	Common Stockholder of United
Frank Palumbo, et al., Plaintiffs, v. Electric Bond and Share Company, et al., Defendants	United States District Court for the Southern District of New York	Common Stockholder of United
Andrew Acuzzo, Plaintiff, v. Earle Bailie, et al., Defendants	Supreme Court of the State of New York, Kings County	Common Stockholder of United

Exhibit C.

Title of Action	*Court*	*Plaintiff*
Jennie Britton, et al., Plaintiffs, v. Electric Bond and Share Company, et al., Defendants	Supreme Court of the State of New York, Kings County	Stockholder of Electric
Rebecca Y. Rosenblatt, Plaintiff, v. H. C. Abell, et al., Defendants	Supreme Court of the State of New York, Kings County	Stockholder of Electric
Henriette M. Hoffman, Plaintiff, v. Electric Bond and Share Company, et al., Defendants	Supreme Court of the State of New York, Kings County	Common Stockholder of United
A. Shell Lezberg, et al., Plaintiffs, v. Groesbeck, et al., Defendants	United States District Court for the Southern District of New York	Stockholder of Electric
Rebecca Y. Rosenblatt, Plaintiff, v. H. L. Dickerson, et al., Defendants	United States District Court for the Southern District of New York	Stockholder of Electric
Helen Katz, Plaintiff, v. Ernest B. Tracy, et al., Defendants	Supreme Court of the State of New York, New York County	Stockholder of Electric
Jeanne Koster, Plaintiff, v. Earle Bailie, et al., Defendants	Supreme Court of the State of New York, New York County	Stockholder of Electric

Pending a final order herein, the institution of any other action or proceeding in this or any other forum, by or on behalf of United, Electric or Bond and Share, or any of their respective security holders with respect to any of the acts or transactions encompassed by the Plan or the Commission's Order of September 7, 1944 would interfere with, or tend to interfere with, compliance with said Order and the orderly enforcement of the Plan in this Court, and would result in unnecessary expense and

delay, and might result in reparable damage to United, Electric, and/or Bond and Share, and/or their respective security holders.

WHEREFORE, applicant respectfully prays that the Court, in accordance with the provisions of Section 11(e) of the Act, take the following action:

(a) Hold a hearing on this application;

(b) Order United to give such notice of said hearing to the participants in the proceedings before the Commission and to the holders of its common stock and option warrants for the purchase of its common stock and to other persons as the Court may deem appropriate;

(c) After such notice and hearing, approve the plan as fair and equitable and as appropriate to effectuate the provisions of Section 11(b) of the Act;

(d) Enjoin, during the pendency of these proceedings, all security holders of United, Bond and Share and Electric and all other persons from doing any act or taking any action interfering with, or tending to interfere with, these proceedings or with the carrying out of the plan, and compliance with the order of the Commission approving it, including the commencement or prosecution of any action, suit or proceeding at law or in equity or under any statute in any Court or before any executive or administrative officer, commission or tribunal, other than such proceedings before the Commission or this Court or the Circuit Court of Appeals, as may be appropriate under the Act or the rules and regulations promulgated thereunder;

(e) Order United, Bond and Share and Electric and their officers, directors and agents to take such steps and do such acts as may be necessary for the purpose of enforcement of said order of the Commission approving the plan and carrying out the terms and provisions of the plan;

(f) After approval of the plan, enjoin all security holders of United, Bond and Share and Electric and all other persons from doing any act or taking any action interfering with or tending to interfere with these proceedings, with the enforcement of said order of the Commission or with the carrying out of the plan, including the commencement or prosecution of any action, suit or proceeding at law or in equity or under any statute in any Court or before any executive or administrative officer, commission, or tribunal, other than such proceedings before the Commission or this Court or the Circuit Court of Appeals as may be appropriate under the Act or the rules and regulations promulgated thereunder;

(g) Grant such other, further and different relief and enter such other orders or decrees as the Court may find to be just and equitable in the premises.

(sgd) MORTON E. YOHALEM,
Morton E. Yohalem, Counsel
Public Utilities Division

September 8, 1944.

Exhibit D.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF DELAWARE

IN THE MATTER OF UNITED GAS CORPORATION ELECTRIC BOND AND SHARE COMPANY *and* ELECTRIC POWER & LIGHT CORPORATION	A Proceeding to Enforce a Plan Pursuant to Section 11(e) and 18(f) of the Public Utility Holding Company Act of 1935 Civil Action 471

ORDER

On this 8th day of September, 1944 upon consideration of the Application of the Securities and Exchange Commission, filed herein on the 8th day of September, 1944, and on motion of counsel for said Commmission, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That a hearing be held on the 29th day of September 1944 at 10:30 A. M., in the District Court of the United States for the District of Delaware at the United States Court House, Wilmington, Delaware, before the Honorable Paul Leahy, District Judge, for the purpose of determining whether the plan dated March 1, 1944 proposed by United Gas Corporation, Electric Bond and Share Company and Electric Power & Light Corporation pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 is fair and equitable and appropriate to effectuate the provisions of Section 11(b) of the Public Utility Holding Company Act of 1935, and whether the Court should enforce and carry out the terms and provisions of the plan, and for

such other purposes as may appear necessary or appropriate in the premises;

2. That United Gas Corporation give notice of said hearing to the holders of its common stock and option warrants for the purchase of its common stock insofar as the identity of such persons is known or available to it, and to every other person, or his attorney of record, who entered an appearance at the hearing before the Securities and Exchange Commission, with respect to the plan, by mailing postage prepaid to his or her last known address a copy of the Notice attached hereto and marked Exhibit I and a copy of the Commission's Findings and Opinion dated September 7, 1944, exclusive of the Appendices therein contained, copies of which shall be obtainable on request free of charge from United Gas Corporation, 2 Rector Street, New York 6, New York, and that notice be given to all other persons by publication once in a newspaper of general circulation published in the Cities of New York, New York; Chicago, Illinois; Philadelphia, Pennsylvania; Boston, Massachusetts; Houston, Texas; and Shreveport, Louisiana in the form hereto annexed as Exhibit I, and that such notices be mailed and published respectively on or before the 16th day of September, 1944.

3. That on or before September 25th, 1944, any person who proposes to oppose the application of the Securities and Exchange Commission and the enforcement and carrying out of the terms and provisions of said plan and the approval of this Court of said plan, shall serve by mail on Morton E. Yohalem, Counsel for the Public Utilities Division of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania, on Reid & Priest, Counsel for United Gas Corporation, at 2 Rector Street, New York 6, New York; on Simpson, Thacher and Bartlett, Counsel for Electric Bond and Share Company, at 120 Broadway, New York 5, New York; and on Wright,

Exhibit D.

Gordon, Zachry, Parlin and Cahill, Counsel for Electric Power & Light Corporation at 63 Wall Street, New York 5, New York, copies of a written statement of objections and any brief proposed to be filed in support thereof and shall file such statement and brief on or before such date with the Clerk of this Court. Such statement of objections shall be addressed to the Commission's Application herein and to the Commission's Findings and Opinion dated September 7, 1944, referred to above, and shall state in detail, and in the manner required for pleadings by the Rules of Civil Procedure, the extent to which such statement challenges the allegations and findings therein contained, together with any affirmative defense or objections to said application.

4. That during the pendency of these proceedings all security holders of United Gas Corporation, Electric Bond and Share Company and Electric Power & Light Corporation and all other persons be, and they are hereby, enjoined and restrained from doing any act or taking any action interfering with or tending to interfere with these proceedings or with the carrying out of the plan and compliance with the order of the Commission approving it, including the commencement or prosecution of any action, suit or proceeding at law or in equity or under any statute in any court or before any executive or administrative officer, commission or tribunal, other than such proceedings before the Commission or this Court as may be authorized by the Act or the rules and regulations promulgated thereunder and, such review, if any, in the Circuit Court of Appeals as may be provided by law.

By the Court.

(sgd.) PAUL LEAHY,
United States District Judge.

Exhibit I.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF DELAWARE.

IN THE MATTER OF UNITED GAS CORPORATION ELECTRIC BOND AND SHARE COMPANY *and* ELECTRIC POWER & LIGHT CORPORATION	A Proceeding to Enforce a Plan Pursuant to Sections 11(e) and 18(f) of the Public Utility Holding Company Act of 1935 Civil Action 471

NOTICE

TO THE HOLDERS OF COMMON STOCK AND OPTION WARRANTS FOR THE PURCHASE OF COMMON STOCK OF UNITED GAS CORPORATION AND TO ALL OTHER PERSONS

NOTICE IS HEREBY GIVEN, pursuant to an Order of the District Court of the United States for the District of Delaware in the above-entitled cause dated the 8th day of September, 1944, that the Securities and Exchange Commission has filed an Application in said Court to enforce and carry out the terms and provisions of the plan of reorganization dated March 1, 1944 of United Gas Corporation under Section 11(e) of the Public Utility Holding Company Act of 1935, approved by the Securities and Exchange Commission on the 7th day of September, 1944 to effectuate the provisions of Section 11(b) of said Act with respect to United Gas Corporation, Electric Bond and Share Company, and Electric Power & Light Corporation and that a hearing will be held before the Honor-

able Paul Leahy, District Judge, sitting as a Judge of said District Court of the United States at the United States Court House in Wilmington, Delaware, on the 29th day of September, 1944, at 10:30 A. M. for the purpose of determining whether the Court should enforce and carry out the terms and provisions of said plan, and whether said plan is fair and equitable and appropriate to effectuate the provisions of Section 11(b) of said Act for such other purposes as may appear necessary or appropriate in the premises.

Copies of the Commission's Findings and Opinion dated September 7th, 1944 together with the Appendices referred to therein may be obtained on request and free of charge from United Gas Corporation at 2 Rector Street, New York 6, New York.

Any person who proposes to oppose the enforcement and carrying out of the terms and provisions of said plan or the approval of the plan by said Court, is required by said order of the Court to serve, on or before the 25th day of September, 1944, on Morton E. Yohalem, Counsel for the Public Utilities Division of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania; on Reid & Priest, Counsel for United Gas Corporation, at 2 Rector Street, New York 6, New York; on Simpson Thacher and Bartlett, Counsel for Electric Bond and Share Company, at 120 Broadway, New York 5, New York, and on Wright, Gordon, Zachry, Parlin and Cahill, Counsel for Electric Power & Light Corporation at 63 Wall Street, New York 5, New York, copies of a written statement of objections and any brief proposed to be filed in support thereof and shall file such statement and brief on or before such date with the Clerk of said District Court of the United States. The Court's order provides that such statement of objections shall be addressed to the Commission's Application to said Court

and to its said Findings and Opinion and shall state in detail, and in the manner required for pleadings by the Rules of Civil Procedure for the District Courts of the United States, the extent to which such statement challenges the allegations and findings therein contained, together with any affirmative defense or objection to said Application.

NOTICE IS FURTHER GIVEN that during the pendency of these proceedings all security holders of United Gas Corporation, Electric Bond and Share Company and Electric Power & Light Corporation and all other persons are enjoined and restrained from doing any act or taking any action interfering with or tending to interfere with these proceedings or with the carrying out of the plan in compliance with the order of the Commission approving it, including the commencement or prosecution of any action, suit or proceeding at law or in equity or under any statute in any Court or before any executive or administrative officer, commission or tribunal other than such proceedings before the Commission or this Court as may be authorized by the Act or rules and regulations promulgated thereunder, and, such review, if any, in the Circuit Court of Appeals as may be provided by law.

UNITED GAS CORPORATION

By .....
President

Affidavit of Samuel Okin in Opposition to Motion to Dismiss.

UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

[TITLE OMITTED]

State of New York, } ss.:
County of New York, }

SAMUEL OKIN being duly sworn, deposes and says that he is the petitioner in the above entitled proceeding and is fully familiar with all the facts hereinafter stated.

Because of the lack of time for the submission of the necessary papers by deponent in opposition to the motion of the Securities and Exchange Commission to dismiss the petition in the above entitled proceeding, and the fact that the brief in opposition to said motion by deponent is approximately 70 pages in length, deponent respectfully requests that the facts and statements appearing at pages 1 to 36, inclusive, of the petition filed by the petitioner with the above named Court on the 20th day of September, 1944, be incorporated into this affidavit with the same force and effect as though fully stated herein, and that said facts and statements in said petition be considered reiterated and restated herein, with the same force and effect as though fully stated herein, and that said facts and statements be considered by this Court in opposition to the motion of the said Commission. Likewise deponent respectfully asks that the additional facts and statements appearing at pages 31 to 34, inclusive, and pages 38 to 51, inclusive, of the affidavit of deponent sworn to the 28th day of September, 1944, and filed by deponent with this

Court in support of deponent's motion for a stay of proceedings before the United States District Court for the District of Delaware, be incorporated into this affidavit with the same force and effect as though fully stated herein, and that the said facts and statements in said affidavit, be considered reiterated and restated herein, with the same force and effect as though fully stated herein, and that said facts and statements be considered by this Court in opposition to the motion of the Commission.

Deponent respectfully states that it is his opinion that the order of the Commission dated the 7th day of September, 1944, which is the subject matter of this proceeding, is final and is properly before this Court for review under Section 24(a) of the Public Utility Holding Company Act of 1935. (See L. J. Marquis & Co. v. Securities and Exchange Commission, 134 Fed. (2d) 822); Marquis v. Securities and Exchange Commission, 134 Fed. (2d) 335 (C. C. A. 2d Cir.); Columbia Oil & Gasoline Corp. v. Securities and Exchange Commission, 134 Fed. (2d) 265, C. C. A. 3rd); In re Securities and Exchange Commission (Otis & Co., Intervenor) 142 Fed. (2d) 411, 420, 421 (C. C. A. 3rd. Cir.).

The attempt of the Commission on this motion to claim that the order dated the 7th day of September, 1944, is interlocutory because of the following provision contained in the said order:

> "IT IS FURTHER ORDERED that this Order shall not be operative to authorize the consummation of any transactions proposed in the Plan until an appropriate United States District Court shall, upon application of the Commission, enter an order enforcing the plan herein approved."

is in deponent's opinion without any basis in law whatsoever. The aforesaid provisions are in deponent's opinion merely a restatement of the provisions of Section 11(e) of the Public Utility Holding Company Act of 1935 which require that the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of Section 18, to enforce and carry out the terms and provisions of such plan, and that the court upon such application, after notice and opportunity for hearing, if it finds that the plan is fair and equitable and appropriate to effectuate the provisions of Section 11, the court is empowered to approve such plan. These provisions of Section 11(e) however are intended only in the case where the company can not obtain the necessary approval of the stockholders of the company, and the proceeding before the District Court, in deponent's opinion, in no way affects the order of the Commission. As a matter of fact, the Act provides for two distinct processes with respect to a plan filed under Section 11(e); (a) the Commission after notice and opportunity for hearing, must find the plan *necessary to effectuate the provisions of subsection (b) of the Section 11 and fair and equitable to the persons affected by such plan;* and (b) the Court after notice and opportunity for hearing must find the plan *as fair and equitable and as appropriate to effectuate the provisions of section 11.* The attempted claim of the Commission that the proceedings before the District Court fully protect petitioner and that he should not be permitted to seek review in this Court of the Commission's order, is not only in deponent's opinion contrary to the specific provisions of the Public Utility Holding Company Act of 1935 and its expressed intent and purpose, but in addition actually petitioner after the argument of his motion for a stay herein on October 2, 1944, found that on October 3, 1944, the said District Judge refused to per-

mit petitioner to continue with the cross-examination of his witness in support of his objections and defenses to the plan before the Court and refused to permit petitioner to have other witnesses sworn to testify in support of petitioner's affirmative defenses. We thus have a situation where the Commission attempts to deprive this petitioner of a review in this Court under Section 24(a), and the District Judge takes the position that deponent cannot proceed with the eliciting of his testimony of witnesses before the District Court with respect to the plan before it.

The attempt of the Commission on this motion to contend that only the orders made under subsection (b) of Section 11 of the Act are reviewable under Section 24(a) of the Act, is in deponent's opinion predicated completely on a wholly mistaken construction of the Act. In the accompanying brief we have referred to contents of Senate Report 621 which accompanied the said Public Utility Holding Company Act of 1935, and an examination of said report and said subsections (c), (d), (e) and (f) of the said Section 11, show very clearly that the said subsections (c), (d), (e) and (f) were intended to constitute the enforcement proceedings of orders made under subsection (b) of said Section 11. It is deponent's opinion that the attempt on the part of the Commission to argue that subsections (c), (d), (e) and (f) are to be completely segregated from subsection (b) of section 11, and that an order made by the Commission under subsection (e) of section 11 shall not be reviewed by this Court is wholly fallacious. The attempt further to argue that the finding by the Commission that the plan is necessary to effectuate the provisions of subsection (b) of the Section 11, by the Commission, is the same as the required finding by the Court that the plan is appropriate to effectuate the provisions of section 11, is in deponent's opinion with-

out foundation. Congress used different language for the finding by the Commission as distinguished from the required finding by the Court, and any attempt to claim that the carefully chosen language by Congress obviously different in purport, means the same thing, is in deponent's opinion a wholly fallacious argument.

The contention of the Commission that the case of *Federal Power Commission* v. *Metropolitan Edison Company*, 304 U. S. 375, supports their contention, is wholly without foundation in deponent's opinion. The said decision merely held that a procedural order is not reviewable. How any one can possibly contend that the order of the Commission dated the 7th day of September, 1944, comes within the class of procedural orders is beyond the stretch of deponent's imagination. As a matter of fact at page 10 of its brief, Commission makes the following statements:

> "The Commission's order approving the plan is, of course, final so far as the Commission is concerned and as such both susceptible of enforcement and of 'review' incident to the enforcement proceedings in the District Court."

The contention that the said order of the Commission is reviewable by the District Court in the enforcement proceedings is wholly without any foundation in statute (The Public Utility Holding Company Act of 1935). The District Court under the Act has no power to review the order of the Commission.

It is advisable at this point to remind this Court that the said order of the Commission approves many other matters besides the approval of the plan.

The attempt by the Commission to insert into its order the provisions hereinbefore referred to, which are nothing more or less than what the Act provides for, certainly adds

nothing to the order and unquestionably cannot in deponent's opinion constitute any basis for depriving this Court of the power to review the said order of the Commission under Section 24(a) of the said Act. In this Court alone can deponent obtain a review of the said order and the other relief sought in his petition, and if this Court were to grant the motion of the Commission and dismiss petitioner's petition, deponent states without any qualifications that it is his opinion that in no other tribunal other than this Court will this petitioner ever be able to obtain a review of the said order of the Commission and that such action on the part of this Court will in deponent's opinion, deprive him of his constitutional right not to be deprived of his property without due process of law.

It may be opportune at this point to refer to other types of orders which have been held reviewable:

In *Columbia Broadcasting Company, Inc.* v. *United States,* 316 U. S. 407, at page 425 the Court said:

> "But we should not for that reason fail to discriminate between them and this case in which, because of its peculiar circumstances, all the elements prerequisite to judicial review are present. The ultimate of reviewability is not to be found in an overrefined technique, but in the need of the review to protect from irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow, the results of which the regulations purport to control."

A judgment in a proceeding for a writ of prohibition is final and reviewable.

In re Mt. Vernon, 240 U. S. 30;
Missouri v. *Taylor,* 266 U. S. 200.

An order allowing attorney's fees made in the progress of a creditor's suit is final and appealable.

Central Trust Co. v. *U. S. Heating Co.* (C. C. A. 2d) 233 Fed. 420;
Tuttle v. *Claflin*, 88 Fed. 122.

An order adjudging that a creditor is not entitled to a preference in insolvency proceedings is final and appealable.

Yorkshire and American Invest. Mort. Co. v. *Fowler*, 78 Fed. 57.

An order of the District Court in a proceeding instituted by the Interstate Commission to compel answers to certain questions is final and appealable.

Ellis v. *Interstate Com. Com.* 237 U. S. 434.

A decree directing a receiver in a foreclosure suit to turn over the mortgaged property to a receiver of a state court is final and appealable.

Empire Trust Co. v. *Brooks*, 232 Fed. 641 (C. C. A. 5th).

A decree dismissing an auxiliary bill in a foreclosure proceeding, but retaining the cause, and referring it to a master, is final as to the auxiliary bill, and appealable by auxiliary complainants.

Grant v. *E. & W. R. Co.*, 50 Fed. 795 (C. C. A. 5th).

WHEREFORE, deponent respectfully asks that the motion of the Securities and Exchange Commission to dismiss the petition filed by the petitioner with this Court to review the

order of the said Commission dated the 7th day of September, 1944, referred to more fully in the petition herein, be denied in all respects.

SAMUEL OKIN.

Sworn to before me this
9th day of October, 1944.

BARBARA J. MYERS,
Commissioner of Deeds,
New York City.
N. Y. Co. Clks. No. 66, Reg. No. 6-M-27.
Kings Co. Clks. No. 47, Reg. No. 6-M-23.
Commission Expires July 11, 1946.

Opinion.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

No. 19496

SAMUEL OKIN,

Petitioner,

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Before:

SWAN and CLARK, *Circuit Judges.*

Motion by the Securities and Exchange Commission to dismiss a petition filed by Samuel Okin for review of an order of the Commission conditionally approving a plan

filed under the Public Utility Holding Company Act of 1935, § 11(e), 15 U. S. C. A. § 79k(e), for the reorganization of United Gas Corporation. Motion granted and petition dismissed.

MORTON E. YOHALEM, Public Utilities Division Securities and Exchange Commission, of Philadelphia, Pa. (Roger S. Foster, Sol., and Sidney H. Willner, Atty., Securities and Exchange Commission, both of Philadelphia, Pa., on the brief), for the motion.

SAMUEL OKIN, of New York City, pro se, petitioner, in opposition.

REID & PRIEST, of New York City, for United Gas Corporation, Wright, Gordon, Zachry, Parlin & Cahill, of New York City, for Electric Power & Light Corporation, and Simpson, Thacher & Bartlett, of New York City, for Electric Bond and Share Company, also filed affidavits in support of the motion.

CLARK, *Circuit Judge:*

This proceeding comes before us on the motion of the Securities and Exchange Commission to dismiss a petition filed September 20, 1944, by Samuel Okin for review of a Commission order of September 7, 1944, conditionally approving a plan for the reorganization of United Gas Corporation filed by that corporation, its parent, Electric Power & Light Corporation, a registered holding company, and the latter's parent, Electric Bond and Share Company, also a registered holding company. The reorganization plan provides, primarily, for the sale by United Gas Corporation of $100,000,000 of First Mortgage Bonds,

the proceeds of which are to be used to retire that company's publicly held First Preferred Stock at its contract redemption price and to provide for the payment of $44,000,000 in cash to the Electric Bond and Share Company in full settlement of all its claims against the United Gas Corporation, including $52,925,000 in debt claims. The motion to dismiss is based on the contention that jurisdiction to review the plan and all objections to it is now vested in the United States District Court for the District of Delaware, wherein the Commission filed a petition for enforcement of the plan on September 8, 1944.

Petitioner, a stockholder in Bond and Share, bases his right to a review on § 24(a) of the Public Utility Holding Company Act of 1935, 15 U. S. C. A. § 79x(a), which provides that "Any person or party aggrieved by an order issued by the Commission under this chapter may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business" by filing his petition within sixty days. The section contains detailed procedural provisions, including the requirement that "the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered," whereupon "such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part." The Commission relies, however, on the provisions of § 11(e) of the same Act, 15 U. S. C. A. § 79k(e), which, after giving jurisdiction to the Commission to pass upon a plan for the reorganization of any subsidiary company of a registered holding company, states that the Commission may, in accordance with § 18(f) of the Act, 15 U. S. C. A. § 79r(f), apply to the district court of the United States for the proper district to "enforce and carry out the terms and provisions of such plan." Section 11(e) further provides that, if the court, after notice and opportunity for hearing, "shall

approve such plan as fair and equitable and as appropriate to effectuate the provisions of this section, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located," with further power to appoint a trustee to hold or administer the assets so possessed.

It is the Commission's contention that the general provision for review of Commission orders at the behest of a single person must yield to the particular authority given a single district court to pass upon the provisions of a plan as fair and equitable and to enforce it. As supporting this view, it refers to not only the statute above quoted, which makes the approval of the district court a condition precedent to enforcement of the plan, but also the terms of its own order making the plan "operative" only upon the entry of an enforcement order by the appropriate district court. Hence it says that both by fair interpretation of the statute and by express terms of the order of which review is sought, it is as yet merely interlocutory, lacking the finality necessary for immediate review, and further that petitioner does not now show himself "aggrieved" by any order of the Commission. And if and when the district court, which is now conducting hearings, does enter an enforcement order, then all parties in interest will have their usual rights of appeal therefrom.[1]

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[1] The Commission also objects to the standing of petitioner as a party aggrieved, since he is only a stockholder of the grandparent holding company; but this point is not pressed at this time, in view of our holding in a similar case, *Okin* v. *Securities and Exchange Commission*, 2 Cir., 143 F. 2d 945, that its determination is not possible prior to the filing of some record of the proceedings below. Petitioner, in turn, objects to the standing of the three corporations—the debtor and the parent holding companies—to join in support of the Commission's motion, as not that of formal intervenors, a point we need not determine, in view of our decision herewith and their obvious interest at least as *amici curiae*. Petitioner also complains of unfair rulings against him in the district court proceedings in which he has already participated; but such issues are clearly for the court to which by law is committed the review of such proceedings.

the proceeds of which are to be used to retire that company's publicly held First Preferred Stock at its contract redemption price and to provide for the payment of $44,000,000 in cash to the Electric Bond and Share Company in full settlement of all its claims against the United Gas Corporation, including $52,925,000 in debt claims. The motion to dismiss is based on the contention that jurisdiction to review the plan and all objections to it is now vested in the United States District Court for the District of Delaware, wherein the Commission filed a petition for enforcement of the plan on September 8, 1944.

Petitioner, a stockholder in Bond and Share, bases his right to a review on § 24(a) of the Public Utility Holding Company Act of 1935, 15 U. S. C. A. § 79x(a), which provides that "Any person or party aggrieved by an order issued by the Commission under this chapter may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business" by filing his petition within sixty days. The section contains detailed procedural provisions, including the requirement that "the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered," whereupon "such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part." The Commission relies, however, on the provisions of § 11(e) of the same Act, 15 U. S. C. A. § 79k(e), which, after giving jurisdiction to the Commission to pass upon a plan for the reorganization of any subsidiary company of a registered holding company, states that the Commission may, in accordance with § 18(f) of the Act, 15 U. S. C. A. § 79r(f), apply to the district court of the United States for the proper district to "enforce and carry out the terms and provisions of such plan." Section 11(e) further provides that, if the court, after notice and opportunity for hearing, "shall

approve such plan as fair and equitable and as appropriate to effectuate the provisions of this section, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located," with further power to appoint a trustee to hold or administer the assets so possessed.

It is the Commission's contention that the general provision for review of Commission orders at the behest of a single person must yield to the particular authority given a single district court to pass upon the provisions of a plan as fair and equitable and to enforce it. As supporting this view, it refers to not only the statute above quoted, which makes the approval of the district court a condition precedent to enforcement of the plan, but also the terms of its own order making the plan "operative" only upon the entry of an enforcement order by the appropriate district court. Hence it says that both by fair interpretation of the statute and by express terms of the order of which review is sought, it is as yet merely interlocutory, lacking the finality necessary for immediate review, and further that petitioner does not now show himself "aggrieved" by any order of the Commission. And if and when the district court, which is now conducting hearings, does enter an enforcement order, then all parties in interest will have their usual rights of appeal therefrom.[1]

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[1] The Commission also objects to the standing of petitioner as a party aggrieved, since he is only a stockholder of the grandparent holding company; but this point is not pressed at this time, in view of our holding in a similar case, *Okin* v. *Securities and Exchange Commission*, 2 Cir., 143 F. 2d 945, that its determination is not possible prior to the filing of some record of the proceedings below. Petitioner, in turn, objects to the standing of the three corporations—the debtor and the parent holding companies—to join in support of the Commission's motion, as not that of formal intervenors, a point we need not determine, in view of our decision herewith and their obvious interest at least as *amici curiae*. Petitioner also complains of unfair rulings against him in the district court proceedings in which he has already participated; but such issues are clearly for the court to which by law is committed the review of such proceedings.

Finally, the practicalities of the situation press heavily for this result. It is hardly conceivable that a petition for review by a single individual should bar proceedings on the plan in the district court; for that would mean that the holder of an inconsiderable interest, such as the petitioner here actually is, would force all the other parties either to follow his course or await the outcome of his litigation. Indeed, parties who were relying on the district court's notice of opportunity to be heard—required by § 11(e)—would naturally allow the sixty-day period for review to elapse without filing their petition in some distant appellate court. But if the two proceedings advance simultaneously, the resulting situation is even less attractive. Which of two probably conflicting orders should prevail is, of course, not made clear; since the district court has the ultimate responsibility for determining whether the plan is fair and equitable, it would seem that in final analysis that court must have authority to nullify any opposing action of any other court. On the other hand, petitioner is afforded complete relief by the right of appeal accorded all persons aggrieved by a district court order. True, he may have to go to the court of the corporations' domicile in order to present his objections; but it is quite clear that in the case of these vast corporate structures, no unified judicial control is possible unless some of the parties must travel somewhat beyond the confines of their own circuit. The confusion and delay incident to allowing this review, contrasted to the insignificant inconvenience caused the petitioner by dismissal of his present petition, make the indicated result here not at all doubtful.

Cases relied on by the petitioner do not seem to us to controvert this conclusion. Thus, in *L. J. Marquis & Co. v. Securities and Exchange Commission*, 3 Cir., 134 F. 2d 822, the point is not discussed beyond an assertion of exclusive jurisdiction in a single circuit court—a view we

had already followed. *L. J. Marquis & Co.* v. *Securities and Exchange Commission*, 2 Cir., 134 F. 2d 335; cf. *Okin* v. *Securities and Exchange Commission*, 2 Cir., 134 F. 2d 333. We are informed, however, that the plan there did not specifically describe the mode of enforcement contemplated, and the companies requested court enforcement only after the circuit court of appeals had already obtained "exclusive jurisdiction" under § 24(a). Whether or not the issue was squarely presented is not clear, since it came up merely on an application for a stay of the there earlier proceedings, which was denied without opinion. The case of *In re Securities and Exchange Commission* (*Otis & Co., Intervener*), 3 Cir., 142 F. 2d 411, actually tends to support dismissal of this petition. There the court held—on an appeal from a district court decree, D. C. Del., 51 F. Supp. 217—that a party who had not participated in the proceedings before the Commission could, nevertheless, intervene in the district court enforcement proceeding and appeal therefrom, since such enforcement proceeding was in the nature of a review. Hence this case supports the contention that § 11(e) provides for an orderly method of review other than that contemplated by § 24(a).

We conclude, therefore, that petitioner must be referred to the District Court for the District of Delaware for the protection of such rights as he may have in the premises, and that the motion to dismiss the petition for review must be granted. The petition for review is, therefore, dismissed.

I Concur,

T. W. S.

Okin
v.
SEC.
10/20/44

Order Dismissing Petition.

UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 30th day of December, one thousand nine hundred and forty-four.

Present: Hon. THOMAS W. SWAN,
" CHARLES E. CLARK,
Circuit Judges.

[TITLE OMITTED]

A motion having been made herein by counsel for respondent to dismiss the petition herein,

Upon consideration thereof it is

Ordered that the petition herein be and it hereby is dismissed.

THOMAS W. SWAN,
U. S. C. J.

CHARLES E. CLARK,
U. S. C. J.

Order Extending Time Within Which to File Petition for Certiorari.

SUPREME COURT OF THE UNITED STATES

No. 1245, October Term, 1944

Samuel Okin,

Petitioner,

v.

Securities and Exchange Commission.

Upon consideration of the application of the petitioner,

It is ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 29th, 1945.

Robert H. Jackson,
Associate Justice of the Supreme
Court of the United States.

Dated this 27th day of March, 1945.

Order Extending Time Within Which to File Petition for Certiorari.

SUPREME COURT OF THE UNITED STATES

No. 1245, October Term, 1944

Samuel Okin,

Petitioner,

v.

Securities and Exchange Commission.

Upon consideration of the application of counsel for the petitioner,

It is ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 8, 1945.

Robert H. Jackson,
Associate Justice of the Supreme
Court of the United States.

Dated this 26th day of April, 1945.

Stipulation as to Printing of Record.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1944

No. 1245

SAMUEL OKIN,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

It is hereby stipulated and agreed by and between Samuel Okin and the Solicitor General, on behalf of the Securities and Exchange Commission, that only the following portions of the filed certified transcript in the above-entitled cause shall be printed with reference to the petition for a writ of certiorari filed by the said Samuel Okin:

(1) Petition for review.

(2) Commission's motion for dismissal of petition; affidavit in support of motion together with order of Commission dated September 7th, 1944 attached as part of Exhibit B, and petition of Commission in the District Court of Delaware, order of the said District Court and notice of United Gas Corporation attached as Exhibits C and D.

Stipulation as to Printing of Record.

(3) Affidavit in opposition to motion.

(4) Opinion of the Circuit Court of Appeals.

(5) Order dismissing petition.

(6) Orders extending time within which to apply for a writ of certiorari.

It is further stipulated and agreed that either party may make specific reference to any portion of the unprinted certified transcript in the above-entitled cause, as filed with the Clerk of the Supreme Court of the United States.

May 8th, 1945.

SAMUEL OKIN,
Petitioner.

CHARLES FAHY,
Solicitor General.